

HOME CARE SERVICES CONSUMER PROTECTION

CHAPTER 1

HOME CARE SERVICES LICENSING AND REGISTRATION

ARTICLE 1: PURPOSE

Adopt Section 130000 to read:

130000 PURPOSE 130000

- (a) The purpose of the Home Care Services Consumer Protection Act is to promote consumer protection for elderly and disabled individuals who hire a home care aide to come into their homes and provide assistance with activities of daily living.
- (b) Section 1796.10 et seq. of the California Health and Safety Code requires the California Department of Social Services to license Home Care Organizations and establish, maintain, and continuously update a public registry of Registered Home Care Aides and Home Care Aide applicants. *(Added by Stats. 2013, Ch. 790, Sec. 1. Effective January 1, 2014. Provisions to be implemented on January 1, 2016, pursuant to Section 1796.61.)*

Authority cited: Section 1796.63, Health and Safety Code.

Reference: Section 1796.10 et seq., Health and Safety Code.

Adopt as Amended:

ARTICLE 2: DIRECTIVES FOR HOME CARE ORGANIZATIONS

Adopt as Amended Section 130001 to read:

130001 GENERAL

130001

- (a) ~~Unless otherwise specified by the Department, the Home Care Organization shall maintain all personnel and administrative records in a hard copy format, as set forth in regulations.~~ A Home Care Organization may maintain all personnel and administrative records in an electronic format as set forth by the Department, unless otherwise specified by the Department in statute or regulation. Personnel records and administrative records maintained in an electronic format shall be available for the Department to inspect, audit, and copy pursuant to section 130048.
- (1) A hard copy of any personnel records or administrative records, whether maintained physically or electronically, shall be immediately produced by the home care organization upon demand by the Department.
- (2) A document with an original signature shall be maintained in original hard copy format at the home care organization.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Section 1796.10 et seq., Health and Safety Code.

Adopt as Amended Section 130003 to read:

130003 DEFINITIONS

130003

The following general definitions shall apply wherever the terms are used throughout the regulations, except where specifically noted otherwise.

- (a) (1) "Administrator" means the licensee, or the adult designated by the licensee to act in his/her behalf in the overall management of the Home Care Organization.
- (b) ~~(1) "Bona-fide Offer" means a proposal by the buyer to purchase a Home Care Organization with definite terms, in writing, communicated to the seller and accompanied by a cash deposit. (Reserved)~~
- (c) (1) "Confidential Client Information" includes clients' medical details, name, date of birth, age, address, sex, details of family contact, bank details, medical history or records, personal care issues, service records, progress notes, individual personal plans, assessments or reports, guardianship orders, Durable Power of Attorney for Health Care, incoming or outgoing personal correspondence, and all information relating to ethnic or racial origin, political opinions, religious or philosophical beliefs, health or sexual lifestyle.
 - (2) "Common Address" means all components of the Home Care Organization are conducted at a single site and owned and operated by the same licensee, even if there are separate buildings or portions of the Home Care Organization on the site.
 - (3) "Conditional License" means a license which is temporary, nonrenewable and issued for a period not to exceed seven months. A Conditional license is issued in accordance with the criteria specified in 130026.
- (d) (1) "Deficiency" means any failure to comply with any provision of the Home Care Services Consumer Protection Act (Section 1796.10 et seq. of the Health and Safety Code) and regulations adopted by the Department pursuant to the Home Care Services Consumer Protection Act. Deficiency shall have the same meaning as violation and can be used interchangeably.
 - (2) "Department Representative" means any duly authorized officer or agent of the Department.
 - (3) "Designee" means the licensee or the adult designated by the licensee to act on his or her behalf in the overall management of the Home Care Organization(s) or suboffice.

- (e) (1) "Employee" means the same as staff of a Home Care Organization, but it does not mean an Affiliated Home Care Aide. Employee and staff may be used interchangeably.
- (2) "Employee Dishonesty Bond" means Home Care Organization Surety Bond.
- (3) "Exception" means a written authorization issued by the Department to use alternative means which meet the intent of a specific regulation and which is based on the unique needs or circumstances of a specific client or staff person. Exceptions are granted for a particular client or staff person and are not transferable or applicable to any other client, staff person, Home Care Organization or licensee.
- (f) (1) "Facility" means any facility licensed by the Department operating under a valid, unexpired license.
- (g) (Reserved)
- (h) (Reserved)
- (i) (1) "Investigation" means an inquiry by the Department based upon a complaint that may involve communication with the licensee, administrator, Home Care Organization staff, former or current Affiliated Home Care Aides or other necessary individuals or entities, which may occur over the phone, by letter or email, by in-person site visit or by other means necessary.
- (2) "Inspection" means a site visit by a Department Representative to the Home Care Organization or suboffice to ensure compliance with applicable laws.
- (j) (Reserved)
- (k) (Reserved)
- (l) (1) "Licensee" means the adult, firm, partnership, association, corporation, or other entity having the authority and responsibility for the operation of a licensed Home Care Organization.
- (m) (1) "Medical Professional" means an individual who is licensed or certified in California to perform the necessary medical procedures within his or her scope of practice. This includes, but is not limited to, Medical Doctor (MD), Registered Nurse (RN) and Licensed Vocational Nurse (LVN).
- (n) (Reserved)

- (o) (1) "Organization" means the same as Home Care Organization. The terms may be used interchangeably.
- (p) (1) "Pertinent Records" means all records required by the Department, including but not limited to, administrative, personnel, and training records.
- (q) (Reserved)
- (r) (1) "Registration Number" means the Department's ~~Personal~~ Personnel Identification number (Per ID) for the Registered Home Care Aide.

(2) "Responsible Person" means any person or entity authorized by law to act on behalf of any client. Such person or entity may include but not be limited to a minor's parent, a legal guardian, a conservator, or a public placement agency.
- (s) (1) "Serious Deficiency" means any deficiency that presents an immediate or substantial threat to the physical health, mental health or safety of the clients of a Home Care Organization.

(2) "Service Area" means a clearly delineated geographical area in which the Home Care Organization arranges for the provision of home care services.

(3) "Single Site" means all components of the Home Care Organization are conducted at one location and owned and operated by the same licensee, even if there are separate buildings or portions of the Home Care Organization at the location and all have a common mailing address.

(4) "Staff" means the same as employee of a Home Care Organization, but it does not mean an Affiliated Home Care Aide. Staff and employee may be used interchangeably.

(5) "Suboffice" means an office established and administered by a Home Care Organization, for the purpose of providing Home Care Aide training and recruitment and/or the exchange of Home Care Aide personnel documents.

(6) "Substantial Compliance" means the absence of any serious deficiencies.
- (t) (Reserved)
- (u) (Reserved)
- (v) (1) "Violation" means any failure to comply with any provision of the Home Care Services Consumer Protection Act (Section 1796.10 et seq. of the Health and Safety Code) and applicable regulations adopted by the

Department pursuant to the Home Care Services Consumer Protection Act. Violation shall have the same meaning as deficiency and can be used interchangeably.

- (w) (1) "Waiver" means a nontransferable written authorization issued by the Department to use alternative means which meet the intent of a specific regulation and which are based on a Home Care Organization-wide need or circumstance.
- (x) (Reserved)
- (y) (Reserved)
- (z) (Reserved)

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Section 1796.63, Health and Safety Code.

Adopt as Amended Section 130004 to read:

130004 DEFINITIONS — FORMS

130004

- (a) The following forms, which are incorporated in their entirety by reference, apply to the regulations in Title 22, Division 15, Chapter 13 (Home Care Services Licensing and Registration):
- (1) HCS 001 ~~(12/15)~~(08/18) – Home Care Organization Suboffice Request
 - (2) HCS 100 (01/18) – Application for Home Care Aide Registration
 - ~~(3)~~ HCS 101 (10/17) – Home Care Aide Registration Renewal
 - ~~(3)~~ ~~HCS 100 (12/15) – Application for Home Care Aide Registration~~
 - (4) HCS 200 (08/15) – Application for Home Care Organization License
 - (5) HCS 215 (08/15) – Home Care Organization Licensee Applicant Information
 - (6) HCS 308 (08/15) – Designation of Home Care Organization Responsibility
 - (7) HCS 309 (08/15) – Partnership/Corporation/Limited Liability Company Organization Structure
 - (8) HCS 402 (12/15) – Home Care Organization Dishonesty Bond
 - (9) HCS 501 (06/17) – Personnel Record
 - (10) HCS 600 (03/18) – Home Care Organization Personnel Report
 - ~~(10)~~(11) HCS 9165 ~~(08/15)~~(06/18) – Board of Director Statement
 - ~~(11)~~(12) LIC 301E (07/03) – Reference Request
 - ~~(12)~~ ~~LIC 500 (11/2003) – Personnel Report~~
 - (13) LIC 508 (07/15) – Criminal Record Statement
 - (14) LIC 9163 (12/15) – Request for Live Scan Service-Community Care Licensing
 - (15) LIC 9188 (11/15) – Criminal Record Exemption Transfer Request
 - (16) SOC 341 A (03/15) – Statement Acknowledging Requirements to Report Suspected Abuse of Dependent Adults and Elders

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Section 1796.63, Health and Safety Code.

Adopt as Amended:

ARTICLE 3: LICENSE

Adopt as Amended Section 130006 to read:

130006 PROVIDING UNLICENSED HOME CARE SERVICES 130006

- (a) If it is alleged an individual or entity is arranging unlicensed home care services in violation of Section 1796.35 of the Health and Safety Code, the Department shall investigate to determine if the individual or entity is operating without a license.
 - (1) Entities specified in Section 1796.17 of the Health and Safety Code are exempt from licensure.
- (b) If it is determined that unlicensed home care services are being arranged, the individual or entity shall be issued a Notice of Operation in Violation of Law and shall:
 - (1) Immediately cease ~~arranging~~ unlicensed home care services; or
 - (2) Apply for and obtain a license as set forth in 130021.

Authority Cited: Sections 1796.35 and 1796.63, Health and Safety Code.

Reference: Sections 1796.51 and 1796.55, Health and Safety Code.

Adopt Section 130007 to read:

**130007 LICENSING OF INTEGRAL HOME CARE
ORGANIZATIONS**

130007

- (a) Upon receipt of a written application from the Home Care Organization applicant or licensee, the Department may issue a single license for a separate building(s), which might otherwise require a separate license, if the following requirements are met:
 - (1) The separate building(s) of the Home Care Organization are integral components of a single Home Care Organization, and
 - (2) All components of the Home Care Organization are conducted at a single site with a common address and owned and operated by the same licensee.
- (b) If (a) does not apply, each component shall be separately licensed.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.12, 1796.37, 1796.38, and 1796.49, Health and Safety Code.

Adopt Section 130008 to read:

130008 POSTING OF INFORMATION

130008

- (a) A Home Care Organization license shall be valid, unaltered and posted pursuant to subdivision (e) of section 130030 and Section 1796.42 of the Health and Safety Code.
- (b) The posted business hours shall be in no less than 36-point type.
- (c) Notification of sale of property, or business, or both shall be posted in no less than 12-point type and at least thirty (30) calendar days prior to the date of sale.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Section 1796.42, Health and Safety Code.

Adopt as Amended Section 130009 to read:

130009 SALE OF PROPERTY AND BUSINESS

130009

- (a) A Home Care Organization license, and any waiver and exception issued to a Home Care Organization shall not be transferable.
- (b) ~~Upon the death of a Home Care Organization licensee, written notification of the date of death and the status of the Home Care Organization shall be provided to the Department within two (2) days. If a new owner is identified, this change in ownership shall comply with 130022.~~

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Section 1796.55, Health and Safety Code.

Adopt as Amended:

ARTICLE 4: APPLICATION PROCEDURES

Adopt Section 130020 to read:

130020 NONDISCRIMINATION

130020

- (a) Any individual, 18 years of age or older, may apply for a Home Care Organization license regardless of age, sex, race, religion, color, political affiliation, national origin, disability, marital status, actual or perceived sexual orientation, or ancestry.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.12, 1796.36, 1796.37, and 1796.49, Health and Safety Code.

Adopt Section 130021 to read:

130021 APPLICATION FOR INITIAL LICENSE

130021

- (a) Any adult, firm, partnership, association, corporation, county, city, public agency or other governmental entity desiring to obtain a Home Care Organization license shall file with the Department an application, on forms furnished by the Department.
- (b) The Home Care Organization applicant shall sign the application acknowledging he or she has read and understands the statutes and regulations which pertain to Home Care Organizations prior to the issuance of a license.
- (c) The application package shall contain the following on forms furnished by the Department:
 - (1) Application for a Home Care Organization License (HCS 200):
 - (A) Home Care Organization applicant name, mailing address and telephone number.
 - (B) Type of application action requested.
 - (C) Name of the individual or entity filing the application.
 - (D) Name, email address, and telephone number of the Home Care Organization.
 - (E) Physical address and county of the Home Care Organization.
 - (F) Alternate telephone number, if applicable.
 - (G) Mailing address of the Home Care Organization.
 - (H) Name and title of designee or person in charge of the Home Care Organization.
 - (I) Total number of aides as measured by the estimated number of Affiliated Home Care Aides to be employed.
 - (J) Business office hours of Home Care Organization.
 - (K) Property ownership status, and name, mailing address, and phone number of property owner if renting or leasing, if applicable.
 - (L) If the Home Care Organization was previously licensed, provide the previous name and license number.

- (M) If currently operating any community care facility, resource family home, residential care facility for the elderly, residential care facility for persons with chronic life-threatening illness, child day care facility, day care center, family day care home, employer-sponsored child care center, or Home Care Organization, provide the facility or Home Care Organization name and facility or Home Care Organization number.
 - (N) Home Care Organization applicant or Home Care Organization licensee signature, title, county where signed, and date.
 - 1. If the Home Care Organization applicant is a partnership, the name, signature, and mailing address of each general partner shall be provided.
 - 2. If a general partner is a corporation or other business organization, the chief executive officer, or equivalent shall sign the application.
 - a. All general partners shall be on the license and sign the application.
 - 3. If the member or managing member is a corporation or other business organization, the managing member or equivalent shall sign the application.
 - 4. If the Home Care Organization applicant is a corporation the application shall be signed by the chief executive officer or equivalent.
 - (O) Any other information which may be required by the Department for the proper administration and enforcement of this regulation.
- (2) Home Care Organization Licensee Applicant Information (HCS 215):
- (A) Name and title within the Home Care Organization.
 - (B) Sex of Home Care Organization applicant or Home Care Organization licensee.
 - (C) Date of birth of the Home Care Organization applicant or Home Care Organization licensee.
 - (D) The Home Care Organization applicant's or Home Care Organization licensee's home mailing address and home telephone number.

- (E) Other name(s) used by the Home Care Organization applicant or Home Care Organization licensee.
- (F) If the Home Care Organization applicant or Home Care Organization licensee has ever held or currently holds beneficial ownership interest of ten (10) percent or more in a Home Care Organization or a facility listed in Subdivision (b)(8) of Section 1796.17 of the Health and Safety Code, the following shall be provided:
 - 1. Name and address of facility(s) or Home Care Organizations.
 - 2. Effective date(s) of licensure.
 - 3. Facility type, if applicable.
- (G) If the Home Care Organization applicant or Home Care Organization licensee worked in the home care services industry within five (5) years of the application filing date, and if the Home Care Organization applicant or Home Care Organization licensee owned, co-owned, or operated any business within the last three (3) years of the application filing date, the following shall be provided:
 - 1. Name of business.
 - 2. Number of employees.
 - 3. Home Care Organization applicant's or Home Care Organization licensee's title.
 - 4. Start and end date of ownership or operation.
 - 5. Reason for leaving.
- (H) All individuals, each general partner in a partnership, and chief executive officer or authorized representative in a corporation shall provide Home Care Organization applicant information, signature, county where signed, and date of signature.
- (I) If the Home Care Organization applicant or Home Care Organization licensee has prior or present service as an administrator, general partner, corporate officer, or director in a Home Care Organization or facilities as listed in Subdivision (b)(8) of Section 1796.17 of the Health and Safety Code, the following shall be provided:

1. Name and address of facility(s) or Home Care Organization(s).
 2. Effective date(s) of licensure.
 3. Facility type.
- (J) The Home Care Organization applicant or Home Care Organization licensee shall disclose any current or prior TrustLine registration to the Department.
- (K) The Home Care Organization applicant or Home Care Organization licensee shall acknowledge any revocation, denial, exclusion, forfeiture or any other disciplinary action taken or in the process of being taken against a licensed clinic, health care facility, community care facility, resource family home, residential care facility for persons with chronic life-threatening illness, residential care facility for the elderly, child day care facility, day care center, family day care home, employer-sponsored child care center, or Home Care Organization with which they are or were affiliated and provide the following information:
1. Name and address of the facility, Home Care Organization, or licensed clinic.
 2. Effective dates of licensure.
 3. Facility type.
 4. Explanation of action(s) taken and how the action was resolved.
- (L) Any other information which may be required by the Department for the proper administration and enforcement of this regulation.
- (3) Designation of Home Care Organization Responsibility (HCS 308):
- (A) Date form was completed.
 - (B) Home Care Organization name, physical address, county, and telephone number.
 - (C) Name and signature of each designee, acknowledging understanding of his or her roles and responsibilities as a designee of the Home Care Organization, and the understanding that the Home Care Organization operation is governed by statutes and regulations that are enforced by the Department.

- (D) Name and signature of the Home Care Organization applicant or Home Care Organization licensee, and title.
 - (E) Home Care Organization applicant or Home Care Organization licensee mailing address.
 - (F) Any other information which may be required by the Department for the proper administration and enforcement of this regulation.
- (4) Partnership/Corporation/Limited Liability Company Organization Structure (HCS 309):
- (A) Corporations and Limited Liability Companies shall provide the following information:
 - 1. Home Care Organization name as filed with the California Office of the Secretary of State.
 - 2. Name of chief executive officer or equivalent.
 - 3. Incorporation or registration date.
 - 4. Place of incorporation or registration.
 - 5. Corporation or limited liability company number.
 - 6. Supporting documents as set forth in subdivisions (d)(1)(A), (d)(1)(B), and (d)(1)(E).
 - 7. Home Care Organization principal office of business address and county.
 - 8. Name, title, and telephone number of contact person.
 - 9. Name and address of agent for service of process.
 - 10. If the Home Care Organization applicant is an out of state or foreign applicant the following information must be provided:
 - a. Name, mailing address, and telephone number of California representative.
 - 11. Name and addresses of all persons who hold a beneficial ownership of ten (10) percent or more interest in the corporation or Limited Liability Company.
 - a. Percentage of the corporation or Limited Liability Company held.

- b. If ownership interest is indirectly held, provide a diagram showing a chain of ownership and the interests held at each level.
- 12. If a corporation:
 - a. The number of directors, method of selection and if applicable, term of office, and frequency of meetings.
 - b. Name, mailing address, telephone number, and term expiration date for each officer.
- 13. If a Limited Liability Company:
 - a. The number of managers, managing members, method of selection and if applicable, term of office, and frequency of meetings.
 - b. Name, mailing address, telephone number and term expiration date for each manager or managing member.
 - c. Name, officer title, principal office of business address, telephone number and term expiration date of each officer, if applicable.

(B) Public agencies shall provide the following information:

- 1. Identify if the Home Care Organization is a public agency and identify the type of public agency.
- 2. Name, physical address, city, state, and zip code of the public agency.
- 3. Mailing address of the public agency.
- 4. District or area to be served by the public agency and, if necessary, attached map.

(C) Partnerships shall provide the following information:

- 1. Name, principal business address other than Home Care Organization address, telephone number, city, state, and zip code for each general partner.
- 2. Contact person name, title, and telephone number.

(D) Other associations shall provide the following information:

1. A list of persons legally responsible for the Home Care Organization, contact person, and appropriate legal documents which set forth legal responsibility of the Home Care Organization and accountability for operating the Home Care Organization.
- (E) Any other information which may be required by the Department for the proper administration and enforcement of this regulation.
- (5) If the Home Care Organization applicant is an entity controlled by a board of directors, a Board of Directors Statement (HCS 9165) that includes the following:
- (A) Home Care Organization name and telephone number.
 - (B) Board member or prospective board members' name, home mailing address, city, state, zip code, and telephone number.
 - (C) Signed statement from each member or prospective member of the board of directors acknowledging that he or she understands his or her legal duties and obligations as a member of the board of directors and that the Home Care Organization's operation is governed by the laws and regulations enforced by the Department.
 - (D) Date of signature.
- (6) Criminal Record Statement (LIC 508) for each individual specified in Section 1796.33 of the Health and Safety Code:
- (A) Crime information for California, if applicable.
 - (B) Crime information for other states, federal court, military, or jurisdiction outside of the U.S., if applicable.
 - (C) Name of the individual.
 - (D) Address of the individual.
 - (E) Date of birth of the individual.
 - (F) Valid driver's license number of the individual, if applicable.
 - (G) Individual's signature and date.
- (d) The application supporting documents shall contain the following:
- (1) Partnership, Corporation, Limited Liability Company, Organization structure documents shall include:

- (A) A corporation shall provide a copy of its articles of incorporation, constitution and bylaws and any amendments thereto.
 - (B) A Limited Liability Company shall provide a copy of its articles of organization and operating agreement and any amendments thereto.
 - (C) A partnership of any type shall provide a copy of its partnership agreement, any related governing documents, and any amendments thereto.
 - 1. A partnership agreement is not required when the partners are married.
 - (D) Where applicable, a diagram showing all affiliated organizations, including parent, grandparent and other entities that can control the Home Care Organization applicant or Home Care Organization licensee through voting, or power of appointments.
 - (E) A copy of the resolution authorizing the filing of a Home Care Organization license application, if a corporation.
 - (F) Public agencies shall provide a copy of the resolution or legal document authorizing application for Home Care Organization licensure.
 - (G) If the Home Care Organization applicant or Home Care Organization licensee is a foreign corporation, Limited Liability Company, limited partnership or limited liability partnership, the Home Care Organization applicant or Home Care Organization licensee shall provide a copy of registration to do business in California from the Office of the Secretary of State.
 - (H) Any other information which may be required by the Department for the proper administration and enforcement of this regulation.
- (2) Job descriptions for staff, Affiliated Home Care Aides, and volunteers shall include:
- (A) Duties and responsibilities for each classification.
 - (B) Minimum qualifications for each classification.
 - (C) Lines of supervision for each classification.
 - (D) Any other information which may be required by the Department for the proper administration and enforcement of this regulation.

- (3) Personnel policies shall include:
 - (A) Qualifications of employment.
 - (B) Abuse reporting procedures to include instruction outlined in Subdivision (e) of Section 1796.42 of the Health and Safety Code.
 - (C) Hiring practices to include procedures informing employees and Affiliated Home Care Aides that condition of employment includes fingerprint clearance, completion of statement of prior criminal convictions, and tuberculosis clearance and registration, as required.
 - (D) Any other information which may be required by the Department for the proper administration and enforcement of this regulation.
- (4) Affiliated Home Care Aide training plan shall include:
 - (A) Entry-level training:
 - 1. Written description of objectives, title, duration, and instructor of each component for orientation training as specified in Subdivision (b)(1) of Section 1796.44 of the Health and Safety Code.
 - 2. Written description of objectives, title, duration, and instructor of each component for basic safety training as specified in Subdivision (b)(2) of Section 1796.44 of the Health and Safety Code.
 - (B) Annual training:
 - 1. Written description of objectives, title, duration, and instructor of each core competency for annual training as specified in Subdivision (c) of Section 1796.44 of the Health and Safety Code.
 - (C) Provide example of the verification log of training to include information as set forth in Subdivision (d) of section 130067.
 - (D) Any other information which may be required by the Department for the proper administration and enforcement of this regulation.
- (5) Home Care Organization program description shall include:
 - (A) Business Hours.

- (B) Description of basic and optional services to include but not be limited to transportation provided to clients by the Home Care Organization.
 - (C) Procedure for response to abuse reporting duties.
 - (D) A description of service counties or areas where clients are served.
 - (E) Any other information which may be required by the Department for the proper administration and enforcement of this regulation.
 - (F) A pamphlet, brochure, or other documents provided all of the information is included.
- (6) Bonding and Insurance verification shall include:
- (A) Home Care Organization Dishonesty Bond (HCS 402):
 - 1. The original Home Care Organization Dishonesty Bond (HCS 402) shall be received by the Department and be in the amount specified in Subdivision (a)(4) of section 1796.37 of the Health and Safety Code. The Home Care Organization Dishonesty Bond (HCS 402) shall include the following:
 - a. Home Care Organization applicant or Home Care Organization licensee name and mailing address.
 - b. Surety company name, mailing address and telephone number.
 - c. Local agent name and telephone number.
 - d. Home Care Organization name and address.
 - e. Home Care Organization number, if applicable.
 - f. Effective date of the bond.
 - g. Attorney in Fact of Surety company name and signature, bond number, and date signed.
 - h. Principal name and signature.

(B) Certificate(s) of insurance for general liability, professional liability, and workers' compensation as set forth in Subdivisions (a)(2) and (a)(3) of Section 1796.37 of the Health and Safety Code shall include the following for each policy:

1. The policy number.
2. The effective and expiration dates of the policy.
3. The name and address of the carrier.
4. The name and address of the broker or agent.
5. The policy limits.

(C) Any other information which may be required by the Department for the proper administration and enforcement of this regulation.

(e) The following items shall be filed with the application:

- (1) The application information on forms furnished by the Department as specified in (c) and supporting documents.
- (2) The fee for processing the application as set forth in 130028.
- (3) Any other information which may be required by the Department for the proper administration and enforcement of this regulation.

(f) Unless otherwise specified, the Home Care Organization applicant or Home Care Organization licensee shall provide original documents to the Department.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.12, 1796.36, 1796.37, and 1796.49, Health and Safety Code.

Adopt Section 130022 to read:

130022 SUBMISSION OF NEW APPLICATION FORMS

130022

- (a) A Home Care Organization licensee shall file a new application and all other required forms and supporting documents as required by 130021 for the following reasons, which are not limited to:
 - (1) Death of a Licensee
 - (A) The Home Care Organization operations shall not continue until the buyer receives a Home Care Organization license or conditional license.
 - (B) The seller shall notify, in writing, the prospective buyer of the necessity to obtain a Home Care Organization license, as required by this regulation, if the buyer's intent is to continue operating the Home Care Organization. The seller shall send a copy of this written notice to the Department within ten (10) working days of notifying the buyer.
 - (C) The prospective buyer shall submit an application for a Home Care Organization license within five (5) working days of the sale.
 - (D) The Department shall give priority to applications for licensure which are submitted pursuant to this section in order to ensure timely transfer of the property and business. The Department shall make a decision within ninety (90) day after a complete application is submitted on whether to issue a Home Care Organization license pursuant to 130021.
 - (E) If the parties involved in the sale of the property and business fully comply with this section, then the transfer may be completed and the buyer shall not be considered to be operating an unlicensed Home Care Organization while the Department makes final determination on the application for initial licensure.
 - (2) When the licensee is a corporation, any change of licensee including, but not limited to the following:
 - (A) Change in controlling interest including but not limited to change in majority stock holding, change in membership of a nonprofit, change in ownership of parent company or other affiliate.
 - (B) Separating from a parent company.
 - (C) Merger with another company.

(3) Any change within a corporation:

(A) Home Care Organization licensee shall provide information required by Subdivision (c)(4) and (c)(5) of section 130021 provided by the Department.

1. A change of owner will require a new application.

(b) For a change of location, a Home Care Organization shall provide the Department information required by Subdivision (c)(1) and (d)(1)(E) through (d)(1)(H) of section 130021, on forms provided by the Department, and any other information required by the Department.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.12, 1796.36, 1796.37, and 1796.49, Health and Safety Code.

Adopt Section 130023 to read:

**130023 INITIAL APPLICATION REVIEW AND ISSUANCE
OF LICENSE**

130023

- (a) Within ninety (90) calendar days of receipt of the application package, the Department shall give written notice to the Home Care Organization applicant of one of the following:
 - (1) The application package is complete and the Department will begin its review.
 - (2) The application package is deficient, describing what documents are outstanding, inadequate, or both.
 - (A) The Home Care Organization applicant shall submit the required information within thirty (30) calendar days of the date of the notice. Failure to provide the requested information shall result in an application denial.
 - (B) Unless the Department has received and approved a withdrawal request, as set forth in 130024.
- (b) The application review shall not constitute approval of the application.
- (c) Within ninety (90) calendar days following the Department's acceptance of the application the Department shall give written notice to the Home Care Organization applicant or Home Care Organization licensee of one of the following:
 - (1) The application has been approved. Issuance of the license itself shall constitute written notification of license approval.
 - (2) The application has been denied.
 - (A) The notice of denial shall contain the information as set forth in 130040.
 - 1. The Department may continue to review a denied application for reasons that include, but are not limited to a person with a criminal record, which was the basis for license denial, is no longer associated with the Home Care Organization.
 - (3) The Department has ceased review as one or more of the conditions specified in Section 1796.40 of the Health and Safety Code has occurred.

- (A) The Department shall provide written notice to the Home Care Organization applicant, indicating when the Home Care Organization applicant may reapply for licensure. It shall be the responsibility of the Home Care Organization applicant to submit a new application if a license is still desired. Cessation of review will not result in additional time added to the initial denial or revocation period as set forth in Section 1796.40 of the Health and Safety Code.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Section 1796.63, Health and Safety Code.

Adopt Section 130024 to read:

130024 WITHDRAWAL OF APPLICATION

130024

- (a) A Home Care Organization applicant shall have the right to request to withdraw an initial application.
 - (1) The withdrawal shall be in writing and the application fee shall be forfeited.
 - (A) A withdrawal request shall not deprive the Department of its authority to institute or continue a proceeding against the Home Care Organization applicant or Home Care Organization licensee upon any ground provided by law, unless it has consented in writing to such withdrawal.
 - (2) If the Department grants the withdrawal, no time shall be required to elapse before a new application may be submitted.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.12 and 1796.37, Health and Safety Code.

Adopt Section 130025 to read:

130025 LICENSEE ORIENTATION

130025

- (a) The Home Care Organization applicant or Home Care Organization licensee shall attend an orientation approved by the Department prior to being issued a license.
- (b) When applying for more than one license simultaneously or applying for an additional license, the Home Care Organization applicant shall not be required to attend more than one orientation unless three (3) or more years have elapsed from the date of the last orientation the Home Care Organization applicant successfully completed.
 - (1) The orientation shall cover, but not be limited to, the:
 - (A) Scope of operation subject to regulation by the Department.
 - (B) Reporting requirements.
 - (C) Inspection process.
 - (2) Upon completion of the orientation, an assessment shall be administered to the Home Care Organization applicant or Home Care Organization licensee.
 - (A) The assessment shall be successfully completed within thirty (30) calendar days from the date of completion of the orientation ~~of~~ or the fee will be forfeited and application may be denied.
 - (3) An orientation certificate which verifies successful completion will be provided by the Department and shall be included in the personnel record as specified in Subdivision (g) of section 130066.
 - (4) Unless approved by the Department, the orientation fee is due prior to registration for an orientation.
 - (5) The orientation fee is nonrefundable and shall be paid by check or money order made payable to the Department and mailed to the address indicated in the orientation notice.

Authority Cited: Sections 1796.44 and 1796.63, Health and Safety Code.

Reference: Section 1796.37, Health and Safety Code.

Adopt Section 130026 to read:

130026 CONDITIONAL LICENSE

130026

- (a) The Department may issue a conditional license to an applicant, upon the filing of a Home Care Organization application, if the Home Care Organization applicant is in substantial compliance with applicable laws, and an urgent need for licensure exists, including but not limited to, the need to facilitate the sale of a Home Care Organization.
- (b) A conditional license may be issued for a maximum of four (4) months when the Department determines full compliance with licensing laws will be achieved within that time period.
- (c) The Department may extend a conditional license for an additional three (3) months when it determines additional time is required to achieve full compliance with licensing laws due to circumstances beyond the control of the Home Care Organization applicant.
- (d) If, during the conditional license period, the Department discovers any deficiencies, the Department shall have the authority to institute an administrative action and refer the case for criminal prosecution.
- (e) A conditional license shall terminate on the expiration date specified on the conditional license, or upon denial of the application, whichever is earlier.
- (f) If a conditional license is converted to a Home Care Organization license, the renewal date of the Home Care Organization license shall be based upon the original issue date of the conditional license.
- (g) Upon applying for a license, the individual or entity shall no longer be considered an unlicensed Home Care Organization and the civil penalty for violation of Section 1796.35 of the Health and Safety Code shall not accrue for the duration of the conditional license.
- (h) The denial, termination or withdrawal, pursuant to 130024, of a conditional license shall not deprive the Department of its authority to institute or continue a proceeding against the Home Care Organization applicant upon any ground provided by law, including criminal prosecution.
- (i) Civil penalties authorized in Section 1796.35 of the Health and Safety Code shall be imposed if:
 - (1) An unlicensed Home Care Organization is operated and the individual or entity refuses to seek licensure;

- (2) The Home Care Organization applicant seeks licensure and the license application is denied and the individual or entity continues to operate the unlicensed Home Care Organization; or,
 - (3) The conditional license terminates and the individual or entity continues to operate the unlicensed Home Care Organization.
- (j) A Home Care Organization applicant may appeal the denial, pursuant to 130057, or the assessment of civil penalties, pursuant to 130056, or both, to the Bureau Chief.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.35 and 1796.49, Health and Safety Code.

Adopt as Amended Section 130027 to read:

130027 WAIVERS AND EXCEPTIONS

130027

- (a) Unless prior written Department approval is received as specified in subdivision (b), the Home Care Organization licensee shall maintain continuous compliance with the regulations.
- (b) The Department shall have the authority to approve a waiver for a Home Care Organization-wide need ~~or circumstance~~ or an exception for a client, Home Care Aide or staff need ~~or circumstance~~, if the use of alternate concepts, programs, services, procedures, techniques, or personnel qualifications, ~~or the contact of experimental or demonstration projects~~ meets under the following circumstances:
 - (1) Such alternatives shall be carried out with provisions for safe and adequate services, and shall in no instance be detrimental to the health and safety of any Home Care Organization client, staff, volunteer or Affiliated Home Care Aide.
 - (2) The Home Care Organization applicant or Home Care Organization licensee shall submit to the Department a written request for a waiver or exception together with substantiating evidence supporting the request.
- (c) Within thirty (30) calendar days of receipt of a request for a waiver or an exception, the Department shall notify the Home Care Organization applicant or Home Care Organization licensee, in writing, of one of the following:
 - (1) The request has been accepted for consideration.
 - (2) The request is deficient, describing additional information required for the request to be acceptable and a time frame for submitting this information.
 - (A) Failure of the Home Care Organization applicant or Home Care Organization licensee to comply within the time allotted to submit the information as set forth in (c)(2) shall result in denial of the request.
- (d) Within ninety (90) calendar days following the acceptance of the request specified in subdivision (c)(1), the Department shall notify the Home Care Organization applicant or Home Care Organization licensee, in writing, whether the request has been approved or denied.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Section 1796.51, Health and Safety Code.

Adopt as Amended Section 130028 to read:

130028 LICENSING FEES

130028

- (a) An application fee, as specified in Section 1796.49 of the Health and Safety Code shall be charged by the Department. After initial licensure, a renewal fee shall be charged by the Department every two years on the anniversary of the effective date of the license. The fees are necessary for enforcement and administration of Division 2, Chapter 13 of the Health Safety Code.
- (1) A fee of five thousand six hundred and three dollars (\$5,603) for initial application shall be charged until updated pursuant to subdivision (2).
- (2) As often as necessary but no more than every twelve months, a fee for an initial application, in the amount determined by the Department and consistent with Health and Safety Code sections 1796.47 through 1796.49, shall be updated and published.
- ~~(2)~~(3) A fee of five thousand six hundred and three dollars (\$5,603) for renewal application shall be charged until updated pursuant to subdivision (4).
- (4) As often as necessary but no more than every twelve months, a fee for an renewal application, in the amount determined by the Department and consistent with Health and Safety Code sections 1796.47 through 1796.49, shall be updated and published.

Description	Initial Application	Renewal	Location Change	Probation	Change in Corporation
Home Care Organization	\$5,603	\$5,603	\$100	Same as Application	\$200

- (b) In addition to fees set forth in subdivision (a), the Department shall charge the following fees:
- (1) A fee of fifty dollars (\$50) for attendance of a Department approved orientation session.
- (2) A fee to cover any costs incurred by the Department for processing payments including, but not limited to, dishonored check charges, charges for credit and debit transactions, and postage due charges.
- (3) A fee of one hundred dollars (\$100) if an existing licensee moves the Home Care Organization to a new physical address.

- (4) A fee of two hundred dollars (\$200) if change occurs within a corporation as set forth in Subdivisions (a)(2) and (a)(3) of section 130022.
- (5) A probation monitoring fee, if applicable, equal to the initial application fee as specified in 130043.
- (c) All fees shall be nonrefundable.
- (d) Check or money order shall be used to pay all fees unless otherwise specified.
- (e) If a business or personal check has been dishonored, a business or personal check will no longer be accepted, and payment shall be in the form of a cashier's check or money order.

Authority Cited: Sections 1796.49 and 1796.63, Health and Safety Code.

Reference: Sections 1796.12, 1796.31, and 1796.47, Health and Safety Code.

Adopt as Amended:

ARTICLE 5: SUBOFFICE LOCATIONS

Adopt as Amended Section 130030 to read:

130030 ADMINISTRATION OF SUBOFFICE

130030

- (a) A Home Care Organization licensee may operate a suboffice(s) for the purpose of Home Care Aide training and recruitment or exchange of Home Care Aide personnel documents.
- (b) A suboffice shall not ~~have full-time staff. For purposes of this section, full-time means no~~ operate more than 24 hours in a seven-day period.
- (c) Records for clients and Home Care Aides shall not be stored at the suboffice.
- (d) Prior to operation, a suboffice shall be approved by the Department.
 - (1) The request for a Home Care Organization suboffice shall contain the following information, on a Home Care Organization Suboffice Request (HCS 001), furnished by the Department:
 - (A) Type of application action requested.
 - (B) Home Care Organization name, number and mailing address.
 - (C) Name of the licensee and telephone number.
 - (D) Address of the suboffice.
 - (E) Operating days and operating hours of the suboffice.
 - (F) Name and title of designee(s) in charge of the suboffice during operating hours.
 - (G) The primary purpose of the suboffice.
 - (H) How the Home Care Organization will ensure ~~there is no full-time staff working at the suboffice~~ the suboffice is not operating more than 24 hours in a seven-day period and that no records for clients or Home Care Aides are ~~permanently~~ stored at the suboffice.
 - (I) Home Care Organization licensee signature, date, and county where signed.

- (e) A suboffice shall post a copy of the Home Care Organization license in a conspicuous location.
- (f) A suboffice shall not provide in-person meetings with clients or potential clients.
- (g) The Home Care Organization shall submit a new request prior to a change of suboffice.
- (h) The Department shall have inspection authority over a Home Care Organization licensee's suboffice(s) pursuant to 130048.
 - (1) The Department may take administrative action against a Home Care Organization licensee for the failure of a suboffice to comply with any provision of applicable law.
- (i) Pursuant to Subdivision (a) of Section 1796.17 of the Health and Safety Code, the Department may require a suboffice to become licensed as a separate Home Care Organization when it has determined it is no longer within the parameters of the definition of a suboffice.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.42, 1796.51, 1796.52, and 1796.53, Health and Safety Code.

Adopt as Amended:

ARTICLE 6: ADMINISTRATIVE ACTIONS

Adopt Section 130040 to read:

130040 DENIAL OF INITIAL LICENSE

130040

- (a) The Department shall deny an application for an initial Home Care Organization license if it determines the Home Care Organization applicant is not in compliance with applicable laws and regulations.
 - (1) In addition to Section 1796.38 of the Health and Safety Code, an application may be denied for the following reasons:
 - (A) The Home Care Organization applicant has failed to pay a civil penalty assessment pursuant to 130052 or 130054 and in accordance with a final judgement issued by a court of competent jurisdiction, unless payment arrangements acceptable to the Department have been made.
- (b) If the Home Care Organization applicant's initial application is denied, the Department shall mail the Home Care Organization applicant a written notice of denial, which informs the Home Care Organization applicant of the reasons for the denial, and shall advise the Home Care Organization applicant of the right to appeal as set forth in 130057.
 - (1) A denied application shall not deprive the Department of its authority to institute or continue a proceeding against the Home Care Organization applicant or Home Care Organization licensee upon any ground provided by law, unless it has consented in writing to such an agreement.
- (c) Notwithstanding an appeal action, if a Home Care Organization application is denied the business is considered unlicensed and shall not operate pending adoption by the Department of a decision on the denial action.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.38 and 1796.40, Health and Safety Code.

Adopt Section 130041 to read:

130041 REVOCATION OR SUSPENSION OF LICENSE

130041

- (a) In addition to Section 1796.38 of the Health and Safety Code, the Department may revoke or suspend a Home Care Organization license if a Home Care Organization licensee:
- (1) Fails to protect confidential client information.
 - (2) A corporate licensee has a member of the board of directors, an executive director, or an officer who is not eligible for licensure pursuant to Sections 1796.40 or 1796.41 of the Health and Safety Code.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.38 and 1796.41, Health and Safety Code.

Adopt as Amended Section 130042 to read:

130042 EXCLUSIONS

130042

- (a) The Department may prohibit an individual from serving as a member of the board of directors, an executive director, an officer, or as a licensee of a Home Care Organization, or from employing, continuing the employment of, or allowing an individual to volunteer at a Home Care Organization if the individual has contact with clients, prospective clients, or confidential client information and the individual has:
 - (1) Violated, or aided or permitted the violation by any other person of, any provisions of Section 1796.10 et seq. of the Health and Safety Code or of any rules promulgated under this regulation;
 - (2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the Home Care Organization, or the people of the State of California;
 - (3) Been denied a criminal record exemption to work or volunteer in a Home Care Organization, when that person has been convicted of a crime as defined in Section 1522 of the Health and Safety Code;
 - (4) Engaged in any other conduct which would constitute a basis for disciplining a licensee of a Home Care Organization; or,
 - (5) Engaged in acts of financial malfeasance concerning the operation of a Home Care Organization.
- (b) The Department may require the immediate removal of an individual listed in (a) pending a final decision of the matter, when the action is necessary to protect clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.
 - (1) If the Department requires the immediate removal of an individual listed in (a) the Department shall serve an order of immediate exclusion upon the excluded person, which shall notify the excluded person of the basis of the Department's action and of the excluded person's right to a hearing.
 - (2) The notice shall be served either by personal service or registered mail. Within fifteen (15) calendar days after the Department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the Department. The Department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The Department shall do the following upon receipt of a written appeal:

- (A) Within thirty (30) calendar days of receipt of the appeal, serve an accusation upon the excluded person.
 - (B) Within sixty (60) calendar days of receipt of a notice of defense by the excluded person pursuant to Section 11506 of the Government Code, the Department shall substantially begin a hearing on the accusation.
- (3) An order of immediate exclusion may exclude an individual listed in (a) from a Home Care Organization, or the Home Care Aide Registry, and shall remain in effect until the hearing is completed and Director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed to be vacated if the Director fails to make a final determination on the merits within sixty (60) days after the original hearing has been completed.
- (c) An excluded person who files a written appeal with the Department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the Department in writing of any change in mailing address within 48 hours, until the hearing process has been completed or terminated.
- (d) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the Department.
- (e) The Department may institute or continue a disciplinary proceeding against an individual listed in (a) upon any ground provided by this section, or enter an order prohibiting any person from being a member of the board of directors, an executive director, an officer, a licensee, or from contact with clients, perspective prospective clients, or access to confidential client information or otherwise take disciplinary action against the excluded person, notwithstanding any withdrawal of Home Care Organization application, withdrawal of registry application, resignation, withdrawal of employment application, change of duties, discharge, failure to hire, or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the Home Care Organization.
- (1) A licensee's failure to comply with the Department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1796.38 of the Health and Safety Code.
- (f) In cases where the excluded person appealed the exclusion order, and the exclusion order was upheld through the administrative hearing process, the person shall be prohibited for the remainder of the excluded person's life, unless otherwise ordered by the Department, from:

- (1) Serving as a member of the board of directors, an executive director, an officer, a volunteer, or a licensee of a Home Care Organization;
 - (2) Being employed at, continuing employment of, or allowing the individual to volunteer at a Home Care Organization if the individual has contact with clients, prospective clients, or confidential client information at a Home Care Organization;
 - (3) From applying to be or continuing to be a Registered Home Care Aide;
 - (4) Having contact with clients, prospective clients or access to confidential client information of a Home Care Organization.
- (g) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the Department upholding the exclusion order pursuant to Section 11522 of the Government Code. The Department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.
- (h) In cases where the Department informed the excluded person of his or her right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the excluded person shall be prohibited by the Department from engaging in the activities set forth in (f)(1) through (f)(4) for the remainder of the excluded person's life, unless otherwise ordered by the Department.

Authority Cited: Sections 1522, 1558, 1796.38, and 1796.63, Health and Safety Code.

Reference: Sections 1796.40 and 1796.41, Health and Safety Code.

Adopt Section 130043 to read:

130043 PROBATION

130043

- (a) A probation fee shall be charged as set forth in subdivision (b)(5) of section 130028 for each year a license has been placed on probation as a result of a stipulation or decision and order pursuant to the administrative adjudication procedures of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).
- (b) The Department may conduct unannounced inspections in order to determine compliance with a stipulation or decision and order.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.47, 1796.49, 1796.52, and 1796.55, Health and Safety Code.

Adopt Section 130044 to read:

130044 RIGHT TO CHALLENGE MISAPPLICATION OR
CAPRICIOUS ENFORCEMENT

130044

- (a) Each Home Care Organization applicant and Home Care Organization licensee shall have the right, without prejudice, to bring to the attention of the Department any alleged misapplication or capricious enforcement of the Home Care Services Consumer Protection Act or regulations by the Department, or any differences in opinion between the Home Care Organization applicant or Home Care Organization licensee and the Department concerning the proper application of the Home Care Services Consumer Protection Act or regulations.
- (b) Where applicable, a review of the complaint shall be conducted in accordance with Section 130056.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Section 1796.63, Health and Safety Code.

Adopt Section 130045 to read:

130045 TESTIMONY OF CHILD WITNESS OR SIMILARLY
VULNERABLE WITNESS

130045

- (a) An administrative law judge conducting the hearing may permit the testimony of a child witness, or a similarly vulnerable witness, including a witness who is developmentally disabled in accordance with Section 1551.1 of the Health and Safety Code.
- (b) An out-of-court statement made by a minor under 12 years of age who is the subject or victim of an allegation at issue is admissible evidence at an administrative hearing in accordance with Section 1551.2 of the Health and Safety Code.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Section 1796.55, Health and Safety Code.

Adopt as Amended:

ARTICLE 7: ENFORCEMENT PROVISIONS

Adopt as Amended Section 130048 to read:

130048 INSPECTION OR INVESTIGATION AUTHORITY 130048
 OF THE DEPARTMENT

- (a) A Department representative may, upon proper identification and upon stating the purpose of the visit, enter and inspect the premises of any place that arranges for the provision of home care services during business hours or a suboffice during operating hours, with or without advance notice.
- (b) If the Home Care Organization, or suboffice, or both are not open ~~to the public~~ more than eight (8) consecutive hours per month Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m., then the Home Care Organization and suboffice(s) shall be available for inspection or investigation by the Department within two (2) hours' notice by the Department, Monday through Friday, between the hours of 8:00 a.m. and 5:00 p.m.
 - (1) Notice shall be given by phone to the Home Care Organization licensee's telephone number of record.
 - (2) If the Home Care Organization licensee or designee fails to make the Home Care Organization or suboffice, or both, available within the appointed time the licensee shall be cited and may be issued a civil penalty not to exceed one hundred and fifty dollars (\$150).
 - (3) If the Home Care Organization licensee or designee fails to make the Home Care Organization or suboffice, or both, available within the appointed time for a second time within a 12-month period, the licensee shall be cited pursuant to subdivision (m) of section 130052 and Section 1796.52 of the Health and Safety Code, and the Department may withdraw the licensee's authority to operate the suboffice.
 - (4) If the Home Care Organization licensee or designee fails to make the Home Care Organization or suboffice, or both, available within the appointed time for a third time in a 12-month period the licensee shall be cited pursuant to subdivision (n) of section 130052 and Section 1796.52 of the Health and Safety Code, and the Department shall withdraw the licensee's authority to operate the suboffice.
- (c) The Department shall have the authority to interview any Home Care Organization staff, volunteer, or Affiliated Home Care Aide.

- (1) The licensee shall make provisions for private interviews at the Home Care Organization and suboffice.
- (d) The Department shall have the authority to inspect, audit, and copy Home Care Organization records upon demand during business hours. Records may be removed if necessary for copying. Removal of records shall be subject to the following:
 - (1) The Department representative shall not remove any current emergency and health-related information for current personnel if the same information is not otherwise readily available in another document or format.
 - (A) Prior to removing any records, a Department representative shall prepare a list of the records to be removed, sign and date the list upon removal of the records, and leave a copy of the list with the licensee; and,
 - (B) The Department representative shall return the records undamaged and in good order within three (3) working days following the date the records were removed.
- (e) The Department shall have the authority to make any number of inspections to a Home Care Organization and a suboffice in order to determine compliance with applicable laws.
- (f) Reports on the results of each inspection, lists of deficiencies, and plans of correction shall be kept on file with the Department.
- (g) A Home Care Organization licensee's refusal to make records, books, or premises available shall result in a civil penalty.
 - (1) If a Home Care Organization licensee's refusal to make records, books, or premises available is the second violation, a civil penalty pursuant to subdivision (m) of section 130052 shall result, and the Home Care Organization license may be revoked.
 - (2) If a Home Care Organization licensee's refusal to make records, books, or premises available is the third violation, a civil penalty pursuant to subdivision (n) of section 130052 shall result, and the Home Care Organization license shall be revoked.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.52 and 1796.55, Health and Safety Code.

Adopt as Amended Section 130050 to read:

130050 DEFICIENCIES IN COMPLIANCE

130050

- (a) ~~To ensure compliance with applicable laws, each Home Care Organization and suboffice shall be subject to unannounced inspections by the Department no less than once every two years following the effective date of the license. The Home Care Organization shall be responsible for correcting any deficiencies found during an inspection. Compliance with all applicable laws will be determined by the Department.~~ Each Home Care Organization and suboffice shall be periodically subjected to unannounced inspections by the Department to ensure compliance with applicable statutes and regulations.
- (1) The initial unannounced inspection shall occur within two years following initial licensure.
- (2) A Home Care Organization shall be responsible for correcting any deficiencies found during an inspection. Compliance with all applicable statutes and regulations shall be determined by the Department.
- (b) The Department may require a licensee to utilize a self-attestation process during each licensing renewal cycle to certify the Home Care Organization, staff and associated Home Care Aides are in compliance with all applicable statutes and regulations. The licensee shall disclose if the Home Care Organization, staff and associated Home Care Aides are not in compliance.
- (1) The self-attestation shall be signed under penalty of perjury.
- (2) The Department will provide the licensee with the self-attestation by mail and notice as to the date the self-attestation shall be returned to the Department.
- ~~(b)~~(c) If the Department representative determines a deficiency exists, a notice of deficiency shall be issued, unless the deficiency is minor and immediately corrected ~~during the visit.~~
- ~~(e)~~(d) Prior to completion of an inspection, investigation, or other licensing visit, the licensee or designee of the Home Care Organization shall meet with the Department representative to discuss any deficiencies noted, to jointly develop a plan for correcting each deficiency, and to acknowledge receipt of the notice of deficiency.
- ~~(d)~~(e) The notice of deficiency shall be in writing and shall include the following:
- (1) Citation of the statute or regulation which has been violated.

- (2) A description of the deficiency stating the manner in which the licensee failed to comply with a specified statute or regulation, and the particular place or area of the Home Care Organization in which it occurred.
 - (3) The plan for correcting each deficiency.
 - (4) A date by which each deficiency shall be corrected.
 - (A) In determining the date for correcting a deficiency, the Department representative shall consider the following factors:
 - 1. The potential hazard presented by the deficiency.
 - 2. The availability of personnel necessary to correct the deficiency.
 - (B) The date for correcting a deficiency shall not be more than thirty (30) calendar days following service of the notice of deficiency, unless the Department representative determines the deficiency cannot be completely corrected within thirty (30) calendar days.
 - (C) If the date for correcting the deficiency is more than thirty (30) calendar days following service of the notice of deficiency, the notice shall specify the corrective actions which must be taken within thirty (30) calendar days to begin correction.
 - (D) The Department representative shall require correction of the deficiency within 24 hours when a penalty is assessed pursuant to subdivision (g) of section 130052.
- ~~(e)~~(f) The Department representative shall provide the notice of deficiency to the licensee by one of the following means:
- (1) Personal delivery to the licensee, at the completion of the inspection, investigation, or any other licensing visit.
 - (2) If the licensee is not at the Home Care Organization site, leaving the notice with the designee at the completion of the inspection, investigation, or any other licensing visit.
 - (A) Under such circumstances, a copy of the notice shall also be mailed to the licensee.
 - (3) If the licensee or the designee refuses to sign or accept the notice, a notation of the refusal shall be written on the notice and a copy left at the Home Care Organization.

(A) Under such circumstances, a copy of the notice shall also be mailed to the licensee.

(4) A copy of the notice may be provided to the licensee by certified mail.

~~(f)~~(g) The licensee shall be responsible for assuring the plan of correction is implemented and monitored so compliance is maintained.

~~(g)~~(h) If a deficiency is not cited, the licensee will receive a Home Care Organization summary report which serves as a record of the visit.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.52 and 1796.55, Health and Safety Code.

Adopt Section 130051 to read:

130051 FOLLOW-UP INSPECTION TO DETERMINE COMPLIANCE 130051

- (a) A follow-up inspection may be conducted to determine compliance with the plan of correction specified in the notice of deficiency.
- (b) If a follow-up inspection indicates a deficiency was not corrected on or before the date specified in the notice of deficiency, the Department representative shall issue a notice of civil penalty.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.52 and 1796.55, Health and Safety Code.

Adopt Section 130052 to read:

130052 CIVIL PENALTIES

130052

- (a) A civil penalty of fifty dollars (\$50) per day shall be assessed for each of the following violations, if not corrected by the date specified in the notice of deficiency:
 - (1) Posting as set forth in 130008.
 - (2) Administrative records as set forth in 130065.
 - (3) Personnel record as set forth in 130066.
 - (4) Abuse reporting acknowledgement as set forth in subdivision (c) of section 130063 and subdivision (b) of section 130065.
 - (5) Orientation as set forth in 130025.
 - (6) Training verification as set forth in subdivision (d) of section 130067.
- (b) If the violation set forth in (a) is a second violation of the same subdivision within a 12-month period, the Home Care Organization shall be cited and an immediate civil penalty assessment of one hundred fifty dollars (\$150) per cited violation shall be assessed for one day only. Thereafter a civil penalty of fifty dollars (\$50) per day, per cited violation, shall be assessed until the violation is corrected.
- (c) When a Home Care Organization that was cited for a violation and subject to the civil penalty assessment in (b) violates the same subdivision within a 12-month period of the last violation, the Home Care Organization shall be cited and an immediate civil penalty of nine hundred dollars (\$900) per cited violation shall be assessed for one day only. Thereafter, a civil penalty of one hundred dollars (\$100) per day, per cited violation, shall be assessed until the violation is corrected.
- (d) A civil penalty of seventy-five dollars (\$75) per day shall be assessed for each of the following violations, if not corrected by the date specified in the notice of deficiency:
 - (1) Insurance verification as set forth in subdivision (d)(6) of section 130021.
 - (2) Waivers and exception verification as set forth in 130027.
 - (3) Suspected abuse reports as set forth in subdivision (b)(1) of section 130065.

- (e) If the violation set forth in (d) is a second violation of the same subdivision within a 12-month period, the Home Care Organization shall be cited and an immediate civil penalty assessment of one hundred fifty dollars (\$150) per cited violation shall be assessed for one day only. Thereafter a civil penalty of seventy-five dollars (\$75) per day, per cited violation, shall be assessed until the violation is corrected.
- (f) When a Home Care Organization that was cited for a violation and subject to the civil penalty assessment in (e) violates the same subdivision within a 12-month period of the last violation, the Home Care Organization shall be cited and an immediate civil penalty of nine hundred dollars (\$900) per cited violation shall be assessed for one day only. Thereafter, a civil penalty of one hundred dollars (\$100) per day, per cited violation, shall be assessed until the violation is corrected.
- (g) An immediate civil penalty of one hundred dollars (\$100) per cited violation, per day shall be assessed until the violation is corrected for each of the following deficiencies:
 - (1) Tuberculosis examination documents as set forth in Section 1796.45 of the Health and Safety Code.
 - (2) Criminal record clearance or criminal record exemption documents as set forth in subdivision (d) of section 130100 and subdivisions (c), (e), and (g) of section 130066.
- (h) If the violation set forth in (g) is a second violation of the same subdivision within a 12-month period, the Home Care Organization shall be cited and an immediate civil penalty assessment of one hundred fifty dollars (\$150) per cited violation shall be assessed for one day only. Thereafter a civil penalty of one hundred dollars (\$100) per day, per cited violation, shall be assessed until the violation is corrected.
- (i) When a Home Care Organization which was cited for a violation and subject to the civil penalty assessment in (h) violates the same subdivision within a 12-month period of the last violation, the Home Care Organization shall be cited and an immediate civil penalty of nine hundred dollars (\$900) per cited violation shall be assessed for one day only. Thereafter, a civil penalty of one hundred dollars (\$100) per day, per cited violation, shall be assessed until the violation is corrected.
- (j) If a Home Care Organization licensee reports to the Department a violation has been corrected, the civil penalty shall cease as of the day the Department receives written notification the correction was made.

- (1) If the Department later determines the violation was not corrected on the day the Department received notice the correction was completed, civil penalties shall continue to accrue without interruption from the date of the initial civil penalty assessment from the original citation.
 - (2) If it can be verified the correction was made prior to the date of notification, the civil penalty shall cease as of the earlier date.
- (k) If necessary, an inspection shall be made to confirm a violation has been corrected.
- (l) If an immediate civil penalty is assessed, and the violation is corrected on the same day, the civil penalty shall still be assessed for that day.
- (m) If the violation set forth in subdivision (b)(2) of section 130048 or subdivision (g) of section 130048 is a second violation of the same subdivision within a 12-month period, the Home Care Organization shall be cited an immediate civil penalty assessment of five hundred dollars (\$500) per cited violation.
- (n) If the violation set forth in subdivision (b)(2) of section 130048 or subdivision (g) of section 130048 is a third violation of the same subdivision within a 12-month period, the Home Care Organization shall be cited an immediate civil penalty assessment of seven hundred and fifty dollars (\$750) per cited violation, and this may constitute cause for revocation of the Home Care Organization license.
- (o) Unless otherwise ordered by the Department, civil penalties are due and payable upon receipt of notice for payment. Civil penalties shall be paid by check or money order made payable to the Department and mailed to the address indicated in the notice.
- (p) The Department shall have the authority to file a claim in a court of competent jurisdiction or to take other appropriate action for failure to pay civil penalties.

Authority Cited: Sections 1796.55 and 1796.63, Health and Safety Code.

Reference: Sections 1796.47, 1796.51, and 1796.52 Health and Safety Code.

Adopt Section 130053 to read:

130053 EXEMPTION FROM CIVIL PENALTIES

130053

- (a) Civil penalties shall not be assessed against any governmental entity, including a state, or city, holding a Home Care Organization license.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.51 and 1796.52, Health and Safety Code.

Adopt as Amended Section 130054 to read:

130054 UNLICENSED CIVIL PENALTIES

130054

- (a) A civil penalty of nine hundred dollars (\$900) per day shall be assessed for the operation of an unlicensed Home Care Organization under ~~either~~ any of the following conditions:
 - (1) Upon receipt of the Notice of Operation in Violation of Law, the operator fails to ~~submit a complete application for a conditional~~ apply for and obtain a license and continues to operate.
 - (A) For purposes of this section, an application shall be deemed complete if it includes the information required in 130022.
 - (B) The complete application shall be deemed to be submitted when received by the Department.
 - (2) Unlicensed operation continues after denial of the application.
 - (A) Notwithstanding any appeal action, an individual or entity that is denied an application for an initial Home Care Organization license is considered unlicensed, and operation shall cease immediately upon receipt of the denial notice.
 - (3) Unlicensed operation continues after the expiration of the conditional license.
- (b) The civil penalty shall cease the day the Department receives written notice from the unlicensed operator that unlicensed operation has ceased.
 - (1) An investigation shall be made within five (5) working days to verify the unlicensed Home Care Organization operation has ceased.
 - (2) If the unlicensed Home Care Organization operation has not ceased, civil penalties shall continue to accrue without interruption from the date of initial civil penalty assessment.
- (c) All civil penalties shall be paid pursuant to subdivision (o) of section 130052.
- (d) The Department shall have the authority as set forth in subdivision (p) of section 130052 for an unlicensed operator's failure to pay civil penalties.

- (e) Payment of civil penalties or application for Home Care Organization licensure in response to a citation under this section does not permit the operation of a Home Care Organization without a license.

Authority Cited: Sections 1796.35 and 1796.63, Health and Safety Code.

Reference: Sections 1796.47 and 1796.55, Health and Safety Code.

Adopt Section 130055 to read:

130055 UNLICENSED ADMINISTRATIVE APPEAL

130055

- (a) An unlicensed Home Care Organization operator shall have the right to appeal the civil penalty assessment within ten (10) working days from the date of notice on the civil penalty assessment.
 - (1) If the unlicensed Home Care Organization operation has not ceased, the nine hundred dollars (\$900) per day civil penalty shall continue to accrue during the appeal process.
- (b) The appeal review shall be conducted by the Bureau Chief of the Home Care Services Bureau.
- (c) If the reviewer of the appeal determines the civil penalty assessment was not issued in accordance with applicable statutes and regulations, the reviewer shall have the authority to amend or dismiss the civil penalty assessment.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.35 and 1796.55, Health and Safety Code.

Adopt Section 130056 to read:

130056 APPEAL PROCESS FOR CIVIL PENALTIES AND DEFICIENCIES

130056

- (a) A Home Care Organization licensee shall have the right to submit to the Department a written request for a formal review of any civil penalty or deficiency excluding an unlicensed administrative appeal as set forth in 130055, within fifteen (15) business days of receipt of the notice of a civil penalty assessment or a finding of a deficiency, and shall provide all available supporting documentation at that time. The review shall be conducted by the Bureau Chief of the Home Care Services Bureau. The Home Care Organization licensee may submit additional supporting documentation that was unavailable at the time of submitting the request for review within thirty (30) business days after submitting the request for review. If the Department requires additional information from the Home Care Organization licensee, that information shall be requested within thirty (30) business days after receiving the request for review. The licensee shall provide this additional information within thirty (30) business days of receiving the request from the Department. If the Bureau Chief determines the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the Department, the Bureau Chief may amend or dismiss the civil penalty or finding of deficiency. The Home Care Organization licensee shall be notified in writing of the Bureau Chief's decision within sixty (60) business days of the date when all necessary information has been provided to the Department by the Home Care Organization licensee.
- (b) Upon exhausting the review described in subdivision (a), the Home Care Organization licensee may further appeal that decision to the Branch Chief of the Continuing Care Branch within fifteen (15) business days of receipt of notice of the Bureau Chief's decision. The Home Care Organization licensee may submit additional supporting documentation that was unavailable at the time of appeal to the Branch Chief within thirty (30) business days after requesting that appeal. If the Department requires additional information from the Home Care Organization licensee, that information shall be requested within thirty (30) business days after receiving the request for the appeal. The Home Care Organization licensee shall provide this additional information within thirty (30) business days of receiving the request from the Department. If the Branch Chief determines the civil penalty was not assessed, or the finding of the deficiency was not made, in accordance with applicable statutes or regulations of the Department, the Branch Chief may amend or dismiss the civil penalty or finding of deficiency. The Home Care Organization licensee shall be notified in writing of the Branch Chief's decision within sixty (60) business days of the date when all necessary information has been provided to the Department by the licensee. The Branch Chief's decision is considered final and concludes the Home Care Organization licensee's administrative appeal rights regarding the appeal conducted pursuant to this paragraph.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Section 1796.55, Health and Safety Code.

Adopt Section 130057 to read:

130057 APPEAL OF APPLICATION DENIAL

130057

- (a) A Home Care Organization applicant or Home Care Organization licensee may appeal the denial of the application by sending a written notice of appeal to the Department within fifteen (15) calendar days of the date of the denial notice.
- (b) The Department shall, upon receipt of the notice of appeal, advise the Home Care Organization applicant or Home Care Organization licensee in writing of the appeal procedure.
- (c) The proceedings to review such denial shall be conducted pursuant to the provisions of Chapter 5 (commencing with Section 11500), Part 1, Division 3, Title 2 of the Government Code.

Authority Cited: Sections 1796.55 and 1796.63, Health and Safety Code.

Reference: Section 1796.41, Health and Safety Code.

Adopt Section 130058 to read:

130058 COMPLAINTS

130058

- (a) Any person may file a complaint against any Home Care Organization by reporting to the Department notice of an alleged violation of statutes or regulations, including but not limited to, a denial of access of any person authorized by law into the Home Care Organization. A complaint may be made either orally or in writing.
- (b) The Department shall not disclose the identity of the complainant or of any other person named in the complaint unless the complainant authorizes disclosure of those identities.
- (c) Upon receipt of a complaint, other than a complaint alleging denial of a statutory right of access to a Home Care Organization, the Department shall make a preliminary review and, unless the Department determines the complaint is willfully intended to harass a licensee or is without any reasonable basis, the Department shall initiate an investigation within ten (10) calendar days after receiving the complaint, except where an investigation would adversely affect the licensing investigation or the investigation of other agencies. In either event, the complainant shall be promptly informed of the Department's proposed course of action.
 - (1) If the complaint alleges denial of a statutory right of access to the facility the Department shall do the following:
 - (A) Review the complaint.
 - (B) Promptly inform the complainant, if not anonymous, of the Department's proposed course of action in response to the complaint.
- (d) The substance of the complaint shall be provided to the Home Care Organization licensee no earlier than at the time of the investigation. Unless the complainant specifically requests otherwise, the name of the complainant, the substance of the complaint provided the Home Care Organization licensee nor any copy of the complaint or any record published, released, or otherwise made available to the licensee shall disclose the name of any person mentioned in the complaint except the name of any Department representative conducting the investigation or inspection pursuant to this regulation.
- (e) If the Department determines the complaint is intended to harass, is without a reasonable basis, or the investigation determines the complaint is unfounded, then the complaint and any documents related to it shall be marked confidential and shall not be disclosed to the public.

- (f) The Department shall not be required to act upon a request for inspection if the request does not allege a violation of an applicable statute or regulation by the Home Care Organization.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.51 and 1795.52, Health and Safety Code.

Adopt as Amended:

ARTICLE 8: CONTINUING REQUIREMENTS

Adopt as Amended Section 130062 to read:

130062 REPORTING REQUIREMENTS

130062

- (a) Each Home Care Organization applicant or Home Care Organization licensee shall provide the Department reports, including but not limited to, those specified in this section.
 - (1) The following shall be reported in writing to the Department within ten (10) working days ~~preceding~~ of the occurrence:
 - (A) Organizational changes specified in subdivision (a)(3) of section 130022.
 - (B) A change in the Home Care Organization applicant or Home Care Organization licensee mailing address or telephone number.
 - (C) Information required by subdivision (c)(5) of section 130021.
 - (D) A change in organization responsibility.
 - (E) Separation date of staff, volunteers, and Affiliated Home Care Aides if no longer employed by the Home Care Organization.
 - (F) A claim on the surety bond, specified in subdivision (d)(6) of section 130021, which has been paid by the Home Care Organization or the surety company.
 - 1. The report shall include:
 - a. The name of the individual accused of any property crime including but not limited to theft, larceny, embezzlement, misappropriation, and dishonest acts;
 - b. The registration number of the individual, if applicable;
 - c. Current address and telephone number of the individual;
 - d. The date of the alleged conduct;
 - e. The amount of the alleged damages;

- f. Any evidence regarding the alleged conduct; and,
- g. The name, address, and phone number of the victim.

(G) A change in business hours.

- (2) A change in the location of the Home Care Organization, specified in subdivision (b) of section 130022, shall be reported in writing to the Department thirty (30) working days prior.
- (3) Upon receipt, the Home Care Organization applicant or Home Care Organization licensee shall send to the Department the original criminal record statements, as specified in Sections 1796.23(a) and 1796.33 of the Health and Safety Code, for any persons who hold a beneficial ownership interest of ten (10) percent or more, staff, volunteers, and Affiliated Home Care Aides who have declared criminal history information.
 - (A) Copies of the criminal record statements shall be kept in administrative or personnel records pursuant to 130065 and 130066.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.23, 1796.33, 1796.37, and 1796.53, Health and Safety Code.

Adopt as Amended Section 130063 to read:

130063 ADDITIONAL RESPONSIBILITIES

130063

- (a) A Home Care Organization applicant, Home Care Organization licensee, or designee shall be continuously present during the Home Care Organization's business hours. The Home Care Organization applicant or Home Care Organization licensee shall provide written authorization for a designee to perform administrative processes, which include but are not limited to: managing the Home Care Organization, responding to questions, providing to and receiving documents from the Department, including reports of inspections and consultations, accusations, and civil penalties.
 - (1) Home Care Organization applicants and Home Care Organization licensees that are corporations shall attach board resolutions authorizing this delegation in ~~(b)~~ (a), if applicable.
- (b) The Home Care Organization licensee, if applicable, shall provide evidence each member and prospective member of the board of directors understands his or her legal duties and obligations as a member of the board of directors and that the Home Care Organization's operation is governed by the laws enforced by the Department as required by subdivision (c)(5) of section 130021, on forms provided by the Department in accordance with the timeframe established in subdivision (a)(1) of section 130062.
- (c) The Home Care Organization licensee shall sign a statement acknowledging the requirement to report suspected abuse pursuant to subdivision (b) of section 130065 and Section 1796.42(e) of the Health and Safety Code.
- (d) The Home Care Organization licensee shall require all staff, volunteers, and Affiliated Home Care Aides upon hire to sign a statement acknowledging the requirement to report suspected abuse pursuant to subdivision (b) of section 130065 and Section 1796.42(e) of the Health and Safety Code.
- (e) The Home Care Organization licensee shall require all staff, volunteers, Affiliated Home Care Aides and Affiliated Home Care applicants to maintain a current mailing address with the Home Care Organization.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.37 and 1796.52, Health and Safety Code.

Adopt Section 130064 to read:

130064 ACCOUNTABILITY OF LICENSEE GOVERNING BODY 130064

- (a) The licensee, whether an individual or other entity, is accountable for the general supervision over the Home Care Organization, and for the establishment of policies concerning its operation.
 - (1) If the licensee is a corporation or an association, the governing body shall be active and functioning in order to ensure such accountability.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Section 1796.12, Health and Safety Code.

Adopt Section 130065 to read:

130065 OPERATING REQUIREMENTS AND ADMINISTRATIVE RECORDS 130065

- (a) The following information shall be maintained by the Home Care Organization and be complete and current:
 - (1) All documents required by Subdivision (b) through (e) of Section 1796.42 of the Health and Safety Code.
 - (2) A copy of each waiver and exception filed with the Department and the Department's response to each request.
 - (3) Application documents as specified in section 130021.
 - (4) All signed statements regarding criminal record history as required by Section 1796.33 of the Health and Safety Code.
- (b) The licensee and all staff, volunteers, and Affiliated Home Care Aides shall report any suspected or known dependent adult or elder abuse as required by Section 15630 of the Welfare and Institutions Code and suspected or known child abuse as required by Sections 11164 to 11174.3, inclusive, of the Penal Code.
 - (1) A copy of each suspected abuse report shall be maintained in the Home Care Organization's administrative records and available for review by the Department for three (3) years from the date the report is made.
 - (A) Verification the abuse report was filed shall be maintained in the Home Care Organization administrative records and shall include, but are not limited to, those contained in the following:
 - 1. Fax transmittal sheet with date and time stamp.
 - 2. Registered or certified mail proof of delivery confirmation.
 - 3. Copy of email with date, time stamp, and proof the email was received.
- (c) All administrative records shall be maintained in a secure location at the Home Care Organization's address of licensure as provided in subdivision (c)(1)(E) of section 130021.

Authority Cited: Sections 1796.36, 1796.42, and 1796.63, Health and Safety Code.

Reference: Section 1796.52, Health and Safety Code.

Adopt as Amended Section 130066 to read:

130066 PERSONNEL RECORDS

130066

- (a) The Home Care Organization licensee shall ensure personnel records are maintained and current for the licensee(s), staff, volunteers, and Affiliated Home Care Aides.
 - (1) The Home Care Organization licensee shall organize personnel records utilizing standards provided by the Department or may obtain approval for alternative file organization pursuant to 130027.
- (b) Each Affiliated Home Care Aide's personnel record shall contain ~~the following, on a Personnel Record (HCS 501), furnished by the Department~~ a Personnel Record (HCS 501) form that is completed with accurate information as of the date of hire. The Personnel Record (HCS 501), furnished by the Department, shall contain the following information:
 - (1) Affiliated Home Care Aide's full name.
 - (2) Indicate if ever employed under a different name.
 - (A) List all names used for employment.
 - (3) Telephone number.
 - (4) Date of last Tuberculosis examination.
 - (5) Results of last Tuberculosis examination.
 - (6) Valid driver's license number if the Affiliated Home Care Aide is to transport clients.
 - (7) ~~Date(s) of employment~~ Date of birth.
 - (8) Position title.
 - (9) Position time base.
 - (10) ~~A statement signed by the Affiliated Home Care Aide that he or she is at least 18 years of age.~~ Signature and date by the individual acknowledging that he or she is at least 18 years of age and that the statements made on the Personnel Record (HCS 501) form are true and correct.
 - (11) Current mailing address.

- (12) Employment history, including name and address of former employer(s), telephone number(s), job title(s) and type of work performed, reason for leaving, and dates of employment.
 - ~~(13) Separation date if no longer employed by the Home Care Organization.~~
- (c) Each Affiliated Home Care Aide's personnel record shall also include a hard copy or an electronic copy of the following:
- (1) Documentation of a criminal record clearance, criminal record exemption, or transfer as required.
 - (2) All ~~hard copy mail~~ documents received through the mail from the Department by the Home Care Organization licensee, including but not limited to, criminal record exemption needed requests, approvals, denials, closures, and rescissions.
 - (A) Nothing in this subdivision shall require disclosure of confidential information provided by the Caregiver Background Check Bureau to the individual.
 - (3) Verification of training hours as specified in 130067.
 - (4) A signed Statement Acknowledging Requirements to Report Suspected Abuse of Dependent Adults and Elders (SOC 341 A) and a signed statement acknowledging the requirement to report suspected or known child abuse pursuant to Subdivision (e) of Section 1796.42 of the Health and Safety Code.
 - (5) All communication received pertaining to the Affiliated Home Care Aide's registration on the Home Care Aide Registry including but not limited to, approvals, denials, revocations, and forfeitures.
 - (6) Each Affiliated Home Care Aide's personnel record shall contain Tuberculosis examination documentation as set forth in Section 1796.45 of the Health and Safety Code.
 - (A) This documentation may be contained in a separate confidential file designated for health or medical information.
 - (7) A signed statement of criminal record history as required by Subdivision (a) of Section 1796.23 and Section 1796.33 of the Health and Safety Code on a Criminal Record Statement (LIC 508), furnished by the Department.
 - (A) For Home Care Aide applicants who apply for Home Care Aide registration online, a signed statement, on a Criminal Record Statement (LIC 508), furnished by the Department, must be included in the personnel file.

- (d) ~~Each staff and volunteer personnel record shall contain the following information on a Personnel Record (HCS 501), furnished by the department:~~Each staff and volunteer's personnel record shall contain a Personnel Record (HCS 501) form that is completed with accurate information as of the date of hire. The Personnel Record (HCS 501), furnished by the Department, shall contain the following information:
- (1) Staff or volunteer's full name.
 - (2) Indicate if ever employed under a different name.
 - (A) List all names used for employment.
 - (3) Telephone number.
 - (4) Valid driver's license number if the staff or volunteer is to transport clients.
 - (5) ~~Date(s) of employment~~Date of birth.
 - (6) Position title.
 - (7) Position time base.
 - (8) ~~A statement signed by the staff member that he or she is at least 18 years of age.~~Signature and date by the individual acknowledging that he or she is at least 18 years of age and that the statements made on the Personnel Record (HCS 501) form are true and correct.
 - (9) Current Mailing address.
 - (10) Employment history, including name and address of former employer(s), telephone number(s), job title(s) and type of work performed, reason for leaving, and dates of employment.
 - (11) ~~Separation date if no longer employed or volunteering for the Home Care Organization.~~
- (e) Each staff and volunteer personnel record shall also include a hard copy or electronic copy of the following:
- (1) Documentation of a criminal record clearance, criminal record exemption, or transfer.
 - (2) ~~All hard copy mail documents received~~ through the mail from the Department by the Home Care Organization licensee including criminal record exemption needed requests, approvals, denials, closures, and rescissions.

- (A) Nothing in this subdivision shall require disclosure of confidential information provided by the Caregiver Background Check Bureau to the individual.
- (3) A signed Statement Acknowledging Requirements to Report Suspected Abuse of Dependent Adults and Elders (SOC 341 A) and a signed statement acknowledging the requirement to report suspected or known child abuse pursuant to Subdivision (e) of Section 1796.42 of the Health and Safety Code.
- (4) For staff and volunteers who are required to be fingerprinted pursuant to Section 1796.43 of the Health and Safety Code, a signed statement regarding their criminal record history as required by Subdivision (a) of Section 1796.23 and Section 1796.33 of the Health and Safety Code on a Criminal Record Statement (LIC 508), furnished by the Department.
- (f) ~~Each Home Care Organization licensee personnel record shall contain the following information on a Personnel Record (HCS 501), furnished by the Department:~~Each Home Care Organization licensee's personnel record shall contain a Personnel Record (HCS 501) form that is completed with accurate information as of the time of license application. The Personnel Record (HCS501), furnished by the Department, shall contain the following information:
 - (1) Home Care Organization licensee's full name.
 - (2) Indicate if ever employed under a different name.
 - (A) List all names used for employment.
 - (3) Telephone number.
 - (4) Valid driver's license number if the licensee is to transport clients.
 - (5) ~~Date(s) of employment~~Date of birth.
 - (6) Position title.
 - (7) Position time base.
 - (8) ~~A statement signed by the licensee that he or she is at least 18 years of age.~~Signature and date by the individual acknowledging that he or she is at least 18 years of age and that the statements made on the Personnel Record (HCS 501) form are true and correct.
 - (9) Current Mailing address.

- (10) Employment history, including name and address of former employer(s), telephone number(s), job title(s) and type of work performed, reason for leaving, and dates of employment.
- ~~(11) Separation date if no longer licensee for the Home Care Organization.~~
- (g) Each Home Care Organization licensee personnel record shall also include a hard copy or an electronic copy of the following:
 - (1) Documentation of a criminal record clearance, criminal record exemption, or transfer as required.
 - (2) All ~~hard-copy mail~~ documents received through the mail from the Department by the Home Care Organization licensee including criminal record exemption needed requests, approvals, denials, closures, and rescissions.
 - (A) Nothing in this subdivision shall require disclosure of confidential information provided by the Caregiver Background Check Bureau to the individual.
 - (3) A signed Statement Acknowledging Requirements to Report Suspected Abuse of Dependent Adults and Elders (SOC 341 A) and a signed statement acknowledging the requirement to report suspected or known child abuse pursuant to Subdivision (e) of Section 1796.42 of the Health and Safety Code.
 - (4) Home Care Organization applicant or Home Care Organization licensee certificate of completion of the Department orientation.
 - (5) A signed statement regarding their criminal record history as required by Subdivision (a) of Section 1796.23 and Section 1796.33 of the Health and Safety Code on a Criminal Record Statement (LIC 508), furnished by the Department.
- (h) All records shall be retained for at least three (3) years following separation of employment as an employee or Affiliated Home Care Aide or separation of association as a volunteer.
- (i) All personnel records shall be maintained in a secure location at the Home Care Organization's address of licensure as provided in subdivision (c)(1)(E) of section 130021.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.36, 1796.44, and 1796.45, Health and Safety Code.

Adopt as Amended Section 130067 to read:

130067 AFFILIATED HOME CARE AIDE TRAINING
 REQUIREMENTS

130067

- (a) The five (5) hours of entry level training as set forth in Subdivision (b) of Section 1796.44 of the Health and Safety Code shall be completed after affiliation and hire date to the Home Care Organization but prior to presence with clients.
- (b) The additional five (5) hours of annual training as set forth in Subdivision (c) of Section 1796.44 of the Health and Safety Code shall be completed within the first year of an Affiliated Home Care Aide's hire date and every subsequent year the Affiliated Home Care Aide remains an Affiliated Home Care Aide.
 - (1) When an Affiliated Home Care Aide leaves employment for a period of time, less than a year, and their annual hire date lapses without completing the annual training, the annual training for the year prior must be completed upon return and before presence with clients.
 - (2) When an Affiliated Home Care Aide leaves employment for one year or longer, the hire date will be considered a new hire date and the training requirements set forth in (a) and (b) shall be based upon the new hire date.
 - (3) An Affiliated Home Care Aide who transfers employment from one Home Care Organization to another shall be deemed to meet the requirements of subdivision (a) if the Affiliated Home Care Aide can produce written documentation.
 - (A) For purposes of this section, written documentation means successful completion of training and shall include title and date of training, instructor name and signature, length of training, and Affiliated Home Care Aide name and registration number.
 - (B) The two-hour orientation training is not transferable and shall be completed at each Home Care Organization to which the Affiliated Home Care Aide is associated.
- (c) The emergency procedures training topic included in the required three (3) hours of safety training as set forth in Subdivision (b)(2) of Section 1796.44 of the Health and Safety Code may include but are not limited to the following:
 - (1) Natural disasters.
 - (2) Evacuation of client from home.
 - (3) Contacting emergency services.

- (4) Household emergencies.
- (d) A Home Care Organization licensee must maintain a verification log of training for each Affiliated Home Care Aide.
 - (1) The verification log shall at minimum include the following information:
 - (A) Affiliated Home Care Aide name.
 - (B) Affiliated Home Care Aide hire date.
 - (C) Position title.
 - (D) Registration date.
 - (E) Training title.
 - (F) Brief description of content covered.
 - (G) Month, day, year training was completed.
 - (H) Training hours received.
 - (I) First and last name of instructor.
 - (J) Organization delivering training.
 - (K) Location of training.
 - (2) Written documentation shall be included with the log.

Authority Cited: Sections 1796.44 and 1796.63, Health and Safety Code.

Reference: Section 1796.47, Health and Safety Code.

Adopt Section 130068 to read:

130068 ADDRESS UPDATING REQUIREMENTS FOR STAFF, VOLUNTEERS, AFFILIATED HOME CARE AIDES AND HOME CARE AIDE APPLICANTS 130068

- (a) Staff, volunteers, Affiliated Home Care Aides, and Home Care Aide applicants shall inform the Home Care Organization of any new mailing address in writing within ten (10) days of a change in address.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Section 1796.31, Health and Safety Code.

Adopt as Amended:

ARTICLE 9: HOME CARE AIDE REGISTRY

Adopt Section 130070 to read:

130070 HOME CARE AIDE REGISTRY 130070

- (a) The Department will update the Home Care Aide Registry to remove a Home Care Aide's association with a Home Care Organization upon receiving written notification as specified in subdivision (a)(1)(E) of section 130062.
- (b) When a Registered Home Care Aide has no affiliations with Home Care Organizations, the Home Care Aide Registry will reflect the Registered Home Care Aide as an Independent Home Care Aide.

Authority Cited: Sections 1796.29 and 1796.63, Health and Safety Code.

Reference: Sections 1796.24 and 1796.28, Health and Safety Code.

Adopt as Amended Section 130071 to read:

130071 REGISTRATION STATUS

130071

- (a) A Home Care Aide's registration status on the Home Care Aide Registry is reflected by one of the following:
 - (1) A registration status displaying "pending" on the Home Care Aide Registry is displayed when one of the following occurs:
 - (A) A Home Care Aide applicant submits a completed registration application as specified in 130081 and the criminal record review is in process.
 - (B) A Home Care Aide applicant has submitted an incomplete application.
 - (2) A registration status displaying "registered" on the Home Care Aide Registry is displayed when one of the following occurs:
 - (A) A Home Care Aide applicant has received a criminal record clearance.
 - (B) The Department has received a subsequent notice of non-violent conviction for a Registered Home Care Aide, and the Department has determined that the person shall be allowed to remain on the Home Care Aide Registry until a decision on a criminal record exemption is rendered.
 - 1. The Home Care Aide's registration status will remain registered until final action of the criminal record exemption process.
 - (3) A registration status displaying "closed" on the Home Care Aide Registry is displayed when one of the following occurs:
 - (A) A Home Care Aide applicant fails to submit fingerprints for a criminal record review;
 - (B) A Home Care Aide applicant fails to pay the application fee;
 - (C) A Home Care Aide applicant fails to provide all required application information within the required timeframe as specified in 130081;
 - (D) A Home Care Aide applicant is found to be awaiting trial for a crime;

- (E) A Home Care Aide applicant requests termination of criminal record exemption process or withdraws the initial Home Care Aide Registry application; or,
 - (F) An individual was placed on the Home Care Aide Registry in error.
- (4) A registration status displaying "denied" on the Home Care Aide Registry is displayed for any of the reasons set forth in Sections 1796.25 and 1796.26 of the Health and Safety Code.
- (A) An individual whose registration has been denied shall not reapply for one year from the date of denial.
- (5) A registration status displaying "forfeited" on the Home Care Aide Registry is displayed for any of the reasons set forth in Subdivision (b) of Section 1796.26 of the Health and Safety Code.
- (6) A registration status displaying "revoked" on the Home Care Aide Registry is displayed for any of the reasons set forth in subdivision (a)(1) of section 130091.
- (A) An individual whose registration has been revoked shall not reapply for two years from the date of revocation.
- (7) A registration status displaying "registered-pending ~~renewal~~ review" on the Home Care Aide Registry is displayed when the ~~registered~~ Registered Home Care Aide ~~s~~ has subsequent violent criminal history, a subsequent felony conviction, administrative action under review by the Department, or the Department has issued an immediate exclusion order prohibiting the Affiliated Home Care Aide from employment pending administrative action proceedings.
- (A) The individual in the "registered-pending review" status shall not continue to provide home care services for any Home Care Organization until final determination.
- (8) A registration status displaying "registered*" on the Home Care Aide Registry is displayed when the Registered Home Care Aide has a criminal record exemption issued by the Department.

Authority Cited: Sections 1796.24 and 1796.36, Health and Safety Code.

Reference: Sections 1796.12, 1796.19, 1796.23, 1796.25, 1796.26, and 1796.29, Health and Safety Code.

Adopt as Amended:

ARTICLE 10: HOME CARE AIDE REGISTRATION APPLICATION

Adopt Section 130080 to read:

130080 NONDISCRIMINATION 130080

- (a) Any individual, 18 years of age or older, shall be permitted to apply for Home Care Aide registration regardless of age, sex, race, religion, color, political affiliation, national origin, disability, marital status, actual or perceived sexual orientation, or ancestry.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.12, 1796.21, 1796.22, and 1796.32, Health and Safety Code.

Adopt Section 130081 to read:

130081 APPLICATION FOR INITIAL REGISTRATION

130081

- (a) Any individual seeking to obtain Home Care Aide registration shall file with the Department an application by one of the following means:
 - (1) A Home Care Aide Registry application mailed to the Department with non-refundable application fee, as specified in subdivision (a) of section 130084, paid by check or money order.
 - (2) A Home Care Aide Registry application submitted online with non-refundable application fee, as specified in subdivision (a) of 130084, paid by credit card.
- (b) The application mailed to the Department shall contain the following, on forms furnished by the Department:
 - (1) Application for Home Care Aide Registration (HCS 100):
 - (A) Name of the Home Care Aide applicant filing the application.
 - (B) Other names used by the Home Care Aide applicant.
 - (C) Residence and Mailing address of the Home Care Aide applicant.
 - (D) Date of birth of the Home Care Aide applicant.
 - (E) Sex of the Home Care Aide applicant.
 - (F) Valid driver's license, identification number, permanent resident identification number or out of state identification of the Home Care Aide applicant.
 - (G) Day and evening telephone numbers of the Home Care Aide applicant.
 - (H) Home Care Aide applicant signature and date.
 - (2) Criminal Record Statement (LIC 508):
 - (A) Crime information for California, if applicable.
 - (B) Crime information for other states, federal court, military, or jurisdiction outside of the U.S., if applicable.

- (C) Name and number of the Home Care Organization to which the Home Care Aide applicant is affiliated, if applicable.
 - (D) Name of the Home Care Aide applicant.
 - (E) Address of the Home Care Aide applicant.
 - (F) Date of birth of the Home Care Aide applicant.
 - (G) Valid driver's license number of the Home Care Aide applicant, if applicable.
 - (H) Home Care Aide applicant signature and date.
- (c) The application submitted online to the Department shall contain the following:
- (1) Name of the Home Care Aide applicant filing the application.
 - (2) Other names used by the Home Care Aide applicant.
 - (3) Residence and mailing address of the Home Care Aide applicant.
 - (4) Date of birth of the Home Care Aide applicant.
 - (5) Sex of the Home Care Aide applicant.
 - (6) Valid driver's license, identification number, permanent resident identification number or out of state identification of the Home Care Aide applicant.
 - (7) Day and evening telephone numbers of the Home Care Aide applicant.
 - (8) Crime information for California, if applicable.
 - (9) Crime information for other states, federal court, military, or jurisdiction outside of the U.S., if applicable.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.12, 1796.19, 1796.22, 1796.23, and 1796.25, Health and Safety Code.

Adopt as Amended Section 130082 to read:

**130082 INITIAL APPLICATION REVIEW AND ISSUANCE
OF REGISTRATION**

130082

- (a) Within thirty (30) calendar days of receipt of the application, the Department shall give written notice if the application is deficient, describing what items are outstanding, inadequate, or both, and that the information must be submitted within thirty (30) calendar days of the date of the notice.
 - (1) Written notice shall be given to the Home Care Aide applicant and to each Home Care Organization to which the Home Care Aide is affiliated.
 - (2) An incomplete application means insufficient or no payment has been received, fingerprints were never submitted to Department of Justice, or all required application information was not provided to the Department.
- (b) If the applicant does not submit missing information as requested, the Department shall cease processing of the application, and the application will be considered withdrawn, provided the Department has not denied or taken action to deny the application.
 - (1) The Department shall provide written notice of the application withdrawal to the Home Care Aide applicant and each Home Care Organization to which the Home Care Aide is affiliated.
 - (2) The Home Care Aide applicant shall submit a new application, including application fees, if registration is still desired.
- (c) If the Home Care Aide applicant receives a criminal record clearance or the Department grants a criminal record clearance or criminal record exemption, the Department shall give written notice of the registration approval to the Home Care Aide applicant and each Home Care Organization to which the Home Care Aide is affiliated.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.12, 1796.19, 1796.22, 1796.23, and 1796.25, Health and Safety Code.

Adopt Section 130083 to read:

130083 WITHDRAWAL OF APPLICATION

130083

- (a) A Home Care Aide applicant shall have the right to request to withdraw an initial Home Care Aide Registry application.
 - (1) The withdrawal shall be in writing and the application fee shall be forfeited.
 - (A) A withdrawal request shall not deprive the Department of its authority to institute or continue a proceeding against the Home Care Aide applicant upon any ground provided by law, unless it has consented in writing to such withdrawal.
 - (2) If the Department grants the withdrawal, no time shall be required to elapse before a new application may be submitted.
- (b) In addition to subdivision (b) of section 130082, the Department may cease processing of the application and the application will be considered withdrawn if any of the following apply:
 - (1) The Home Care Aide applicant requires a criminal record exemption and the Home Care Aide applicant requests the Department to cease processing of his or her criminal record exemption.
 - (2) The Home Care Aide applicant is awaiting trial for a crime other than a minor traffic violation.
 - (3) The Home Care Aide applicant has a warrant or pending court action for a crime other than a minor traffic violation.
 - (4) The Home Care Aide applicant fails to respond to the criminal record exemption needed letter or incomplete application letter.
- (c) The Department shall provide written notice of the application withdrawal to the Home Care Aide applicant and all Home Care Organizations to which the Home Care Aide is affiliated.
- (d) It shall be the responsibility of the Home Care Aide applicant to submit a new application if registration is still desired.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Section 1796.19, Health and Safety Code.

Adopt as Amended Section 130084 to read:

130084 APPLICATION FEES

130084

- (a) A Home Care Aide Registry application fee of thirty-five dollars (\$35) shall be charged by the Department until updated pursuant to subdivision (1). The fee is necessary for enforcement and administration of Division 2, Chapter 13 of the Health and Safety Code.

(1) As often as necessary but no more than every twelve months, a fee for a Home Care Aide Registry application, in the amount determined by the Department and consistent with Health and Safety Code sections 1796.47 through 1796.48, shall be updated and published.

- (b) All fees shall be nonrefundable and paid pursuant to Subdivision (a) of section 130081.

(1) If a check has been dishonored, a check is no longer accepted and payment shall be in the form of a money order only.

Authority Cited: Section 1796.48 and 1796.63, Health and Safety Code.

Reference: Sections 1796.12, 1796.23, and 1796.47, Health and Safety Code.

Adopt as Amended:

ARTICLE 11: ADMINISTRATIVE ACTIONS

Adopt Section 130090 to read:

130090 DENIAL OF INITIAL REGISTRATION 130090

- (a) The Department shall deny an application for an initial registration if it is determined the Home Care Aide applicant is not in compliance with applicable laws.
- (b) If the Home Care Aide applicant's initial Home Care Aide Registry application is denied, the Department shall give written notice of the registration denial to the Home Care Aide applicant and the Home Care Organization(s) to which the Home Care Aide is affiliated.
 - (1) The notification shall inform the Home Care Aide applicant of the reasons for the denial, and shall advise the Home Care Aide applicant of the right to appeal as set forth in 130093.
- (c) An individual shall not reapply for Home Care Aide registration until one (1) year has elapsed from the date of the application denial.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.25 and 1796.26, Health and Safety Code.

Adopt Section 130091 to read:

130091 REVOCATION OF REGISTRATION

130091

- (a) The Department shall revoke a Home Care Aide registration if it is determined the Registered Home Care Aide is not in compliance with applicable laws.
 - (1) In addition to the reasons set forth in sections 1796.25 and 1796.26 of the Health and Safety Code, a registration shall be revoked if the Registered Home Care Aide requires a criminal record exemption and the Registered Home Care Aide does not respond to or fails to cooperate with the criminal record exemption process or is not granted a criminal exemption.
- (b) If the Registered Home Care Aide's registration has been revoked, the Department shall give written notice of the revocation to the Registered Home Care Aide and all Home Care Organizations to which the Registered Home Care Aide is affiliated.
 - (1) The notification shall inform the Registered Home Care Aide of the reasons for the revocation, and shall advise the Registered Home Care Aide of the right to appeal as set forth in 130093.
- (c) An individual shall not reapply for Home Care Aide registration until two (2) years have elapsed from the date of the revocation.

Authority Cited: Sections 1796.26 and 1796.63, Health and Safety Code.

Reference: Sections 1796.24 and 1796.25, Health and Safety Code.

Adopt as Amended Section 130092 to read:

130092 EXCLUSIONS

130092

- (a) The Department may prohibit an individual from applying to be a Registered Home Care Aide, or remaining on the Home Care Aide Registry, if the individual has:
 - (1) Violated, or aided or permitted the violation by any other person of, any provisions of Section 1796.10 et seq. of the Health and Safety Code or of any rules promulgated under these regulations;
 - (2) Engaged in conduct which is inimical to the health, morals, welfare, or safety of either an individual in or receiving services from the Home Care Organization, or the people of the State of California;
 - (3) Been denied a criminal record exemption by the Department, when that person has been convicted of a crime as defined in Section 1522 of the Health and Safety Code;
 - (4) Engaged in any other conduct which would constitute a basis for disciplining a licensee of a Home Care Organization; or,
 - (5) Engaged in acts of financial malfeasance concerning the operation of a Home Care Organization.
- (b) The Department may require the immediate removal of an individual listed in (a) pending a final decision on the matter, when the action is necessary to protect clients from physical or mental abuse, abandonment, or any other substantial threat to their health or safety.
 - (1) If the Department requires the immediate removal of an individual listed in (a) the Department shall serve an order of immediate exclusion upon the excluded person, which shall notify the excluded person of the basis of the Department's action and of the excluded person's right to a hearing. The Department shall provide copies of this order to all Home Care Organizations to which the Registered Home Care Aide is affiliated.
 - (2) The notice shall be served either by personal service or registered mail. Within fifteen (15) calendar days after the Department serves an order of immediate exclusion, the excluded person may file a written appeal of the exclusion with the Department. The Department's action shall be final if the excluded person does not appeal the exclusion within the prescribed time. The Department shall do the following upon receipt of a written appeal:

- (A) Within thirty ~~(3)~~ (30) calendar days of receipt of the appeal, serve an accusation upon the excluded person.
 - (B) Within sixty (60) calendar days of receipt of a notice of defense by the excluded person pursuant to Section 11506 of the Government Code, the Department shall substantially begin a hearing on the accusation.
- (3) An order of immediate exclusion may exclude an individual listed in (a) from a Home Care Organization, or the Home Care Aide Registry, or both, and shall remain in effect until the hearing is completed and the Director has made a final determination on the merits. However, the order of immediate exclusion shall be deemed vacated if the Director fails to make a final determination on the merits within sixty (60) days after the original hearing has been completed.
- (c) An excluded person who files a written appeal with the Department pursuant to this section shall, as part of the written request, provide his or her current mailing address. The excluded person shall subsequently notify the Department in writing of any change in mailing address within 48 hours, until the hearing process has been completed or terminated.
- (d) Hearings held pursuant to this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Division 3 of Title 2 of the Government Code. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the Department.
- (e) The Department may institute or continue a disciplinary proceeding against an individual listed in (a) upon any ground provided by this section, or enter an order prohibiting any person from being a member of the board of directors, an executive director, an officer, a licensee, or from contact with clients, perspective prospective clients, or access to confidential client information or otherwise take disciplinary action against the excluded person, notwithstanding any withdrawal of registry application, resignation, withdrawal of employment application, change of duties, discharge, failure to hire, or reassignment of the excluded person by the licensee or that the excluded person no longer has contact with clients at the Home Care Organization.
 - (1) A licensee's failure to comply with the Department's exclusion order after being notified of the order shall be grounds for disciplining the licensee pursuant to Section 1796.38 of the Health and Safety Code.
- (f) In cases where the excluded person appealed the exclusion order, and the exclusion order was upheld through the administrative hearing process, the person shall be prohibited for the remainder of the excluded person's life, unless otherwise ordered by the Department, from:

- (1) Serving as a member of the board of directors, an executive director, an officer, a volunteer, or a licensee of a Home Care Organization;
 - (2) Being employed at, continuing employment of, or volunteering at a Home Care Organization if the individual has contact with clients, prospective clients, or confidential client information of a Home Care Organization.
 - (3) Applying to be or continuing to be a Registered Home Care Aide; or,
 - (4) Having contact with clients, prospective clients or access to confidential client information of a Home Care Organization.
- (g) The excluded individual may petition for reinstatement one year after the effective date of the decision and order of the Department upholding the exclusion order pursuant to Section 11522 of the Government Code. The Department shall provide the excluded person with a copy of Section 11522 of the Government Code with the decision and order.
- (h) In cases where the Department informed the excluded person of his or her right to appeal the exclusion order and the excluded person did not appeal the exclusion order, the excluded person shall be prohibited by the Department from engaging in the activities set forth in (f)(1) through (f)(4) for the remainder of the excluded person's life, unless otherwise ordered by the Department.

Authority Cited: Sections 1522, 1558, and 1796.63, Health and Safety Code.

Reference: Section 1796.25, Health and Safety Code.

Adopt Section 130093 to read:

130093 APPEAL PROCESS

130093

- (a) A Home Care Aide applicant may appeal the denial of the Home Care Aide Registry application by sending a written notice of appeal to the Department within fifteen (15) calendar days of the date of the denial notice.
- (b) A Registered Home Care Aide may appeal the Home Care Aide Registry revocation by sending a written notice of appeal to the Department within fifteen (15) calendar days of the date of the revocation notice.
- (c) The Department shall, upon receipt of the notice of appeal, advise the Home Care Aide applicant or Registered Home Care Aide in writing of the appeal procedure.
- (d) Proceedings for the denial or revocation of a registration shall be conducted in accordance with the provisions of Chapter 5 commencing with Section 11500 of Part 1 of Division 3 of Title 2 of the Government Code.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Section 1796.25, Health and Safety Code.

Adopt Section 130094 to read:

130094 RIGHT TO CHALLENGE MISAPPLICATION OR
CAPRICIOUS ENFORCEMENT

130094

- (a) Each Home Care Aide Applicant and Registered Home Care Aide shall have the right, without prejudice, to bring to the attention of the Department any alleged misapplication or capricious enforcement of regulations by the Department, or any differences in opinion between the Home Care Aide Applicant or Registered Home Care Aide and the Department concerning the proper application of these regulations.
- (b) Where applicable, a review of the complaint shall be conducted in accordance with 130093.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Section 1796.63, Health and Safety Code.

Adopt Section 130095 to read:

130095 CESSATION OF APPLICATION REVIEW

130095

- (a) If an application for a Home Care Aide registration indicates, or the Department determines during the application review process, that the Home Care Aide applicant was previously issued a license under this chapter or under Health and Safety Code Chapter 1 (commencing with Section 1200), Health and Safety Code Chapter 2 (commencing with Section 1250), Health and Safety Code Chapter 3 (commencing with Section 1500), Health and Safety Code Chapter 3.01 (commencing with Section 1568.01), Health and Safety Code Chapter 3.2 (commencing with Section 1569), Health and Safety Code Chapter 3.4 (commencing with Section 1596.70), Health and Safety Code Chapter 3.5 (commencing with Section 1596.90), Health and Safety Code Chapter 3.6 (commencing with Section 1597.30), Health and Safety Code Chapter 3.65 (commencing with Section 1597.70), or that the applicant previously was approved as a resource family under Article 2 (commencing with Section 16519.5) of Chapter 5 of Part 4 of Division 9 of the Welfare and Institutions Code, and the prior license was revoked or prior approval was rescinded within the preceding two years, or the Home Care Aide applicant was previously issued a TrustLine registration under Chapter 3.35 (commencing with 1596.60) or Home Care Aide registration Chapter 13 of the Health and Safety Code (commencing with 1796.10) and the prior registration was revoked within the preceding two years, the Department shall cease any further review of the application until two years have elapsed from the date of the revocation or rescission.
- (b) If an application for registration indicates, or the Department determines during the application review process, that the Home Care Aide applicant previously was issued a certificate of approval by a foster family agency that was revoked by the Department pursuant to Subdivision (b) of Section 1534 of the Health and Safety Code within the preceding two years, the Department shall cease any further review of the application until two years have elapsed from the date of the revocation.
- (c) If an application for registration indicates, or the Department determines during the application review process, that the Home Care Aide applicant was excluded from a facility licensed by the Department pursuant to Sections 1558, 1568.092, 1569.58, or 1596.8897 of the Health and Safety Code, the Department shall cease any further review of the application unless the excluded individual has been reinstated by the Department pursuant to Section 11522 of the Government Code.

- (d) If an application for registration indicates, or the Department determines during the application review process, that the Home Care Aide applicant had previously applied for a license or registration pursuant to any of the chapters listed in subdivision (a) and the application was denied within the last year, the Department shall cease further review of the application until one year has elapsed from the date of the denial. In those circumstances in which denials are appealed and upheld at an administrative hearing, review of the application shall cease for one year from the date of the decision and order of the Department.
- (e) If an application for registration indicates, or the Department determines during the application review process, that the Home Care Aide applicant had previously applied for a certificate of approval with a foster family agency and the Department ordered the foster family agency to deny the application pursuant to Subdivision (b) of Section 1534 of the Health and Safety Code, the Department shall cease further review of the application as follows:
 - (1) In cases where the Home Care Aide applicant petitioned for a hearing, the Department shall cease further review of the application until one year has elapsed from the effective date of the decision and order of the Department upholding the denial.
 - (2) In cases where the Department informed the Home Care Aide applicant of his or her right to petition for a hearing and the Home Care Aide applicant did not petition for a hearing, the Department shall cease further review of the application until one year has elapsed from the date of the notification of the denial and the right to petition for a hearing.
 - (3) The Department may continue to review the application if it has determined that the reasons for the denial of the application were due to circumstances and conditions that either have been corrected or are no longer in existence.
- (f) Cessation of review pursuant to this section does not constitute a denial of the application.

Authority Cited: Section 1796.63, Health and Safety Code.

Reference: Sections 1796.12, 1796.19, 1796.22, 1796.25, and 1796.31, Health and Safety Code.

Adopt as Amended:

ARTICLE 12: CRIMINAL RECORD CLEARANCES

Adopt as Amended Section 130100 to read:

130100 CRIMINAL RECORD CLEARANCE 130100

- (a) The Department shall conduct a criminal record review of all individuals specified in (b) and shall have the authority to approve or deny a Home Care Organization license, Home Care Aide registration, or employment or volunteer work at a Home Care Organization, based upon the results of such review.
- (b) The following individuals are subject to a criminal record review:
 - (1) The owner of a Home Care Organization, if the owner is an individual.
 - (2) If the owner of a Home Care Organization is a corporation, Limited Liability Company, joint venture, association, or other entity, any individual having a 10-percent or greater controlling ownership interest in that entity, as well as the chief executive officer or other person serving in a similar capacity.
 - (3) Any staff person, volunteer, or employee of a Home Care Organization who has contact with clients, prospective clients, or access to confidential client information that may pose a risk to the clients' health and safety.
 - (4) A Registered Home Care Aide or an individual who has submitted an application to become a Registered Home Care Aide.
- (c) The following individuals are exempt from the requirement to submit fingerprints:
 - (1) A medical professional, as defined by the Department in regulations, who holds a valid license or certification from the individual's governing California medical care regulatory entity and who is not employed, retained, or contracted by the licensee, if all the following apply:
 - (A) The criminal record of the individual has been cleared as a condition of licensure or certification by the individual's California medical care regulatory entity.
 - (B) The individual is providing time-limited specialized clinical care or services.
 - (C) The individual is providing care or services within the individual's scope of practice.

- (D) The individual is not a Home Care Organization licensee or an employee of the Home Care Organization.
- (2) A third-party repair person, or similar retained contractor, if all of the following apply:
 - (A) The individual is hired for a defined, time-limited job at the Home Care Organization.
 - (B) The individual is not left alone with clients or prospective clients, and does not have access to confidential client information.
 - (C) When a client, prospective client, or confidential client information is accessible to the repair person or contractor, a staff person who has a criminal record clearance or criminal record exemption is also present.
- (3) Notwithstanding this section requiring a criminal record clearance, nothing in this section shall prevent a Home Care Organization applicant or Home Care Organization licensee from requiring an independent criminal record clearance of any individual associated with the Home Care Organization.
- (d) Prior to and as applicable subsequent to the Department issuing a license to, or an individual having contact with clients or confidential client information, any person specified in subdivision (b) shall obtain a criminal record clearance or criminal record exemption as specified in Section 1522 of the Health and Safety Code.
- (e) Prior to a Home Care Aide becoming registered on the Home Care Aide Registry the individual shall obtain a criminal record clearance or criminal record exemption as specified in Section 1522 of the Health and Safety Code.
- (f) All individuals subject to criminal record review shall be fingerprinted with LiveScan technology or as otherwise approved by the California Department of Justice and sign a Criminal Record Statement (LIC 508) under penalty of perjury.
- (1) A person signing the Criminal Record Statement (LIC 508) must:
 - (A) Declare whether he/she has been convicted of a crime, other than a minor traffic violation as specified in subdivision (j) regardless of whether the individual was granted a pardon for the conviction, received a dismissal pursuant to Sections 1203.4 or 1203.4a of the Penal Code, or the individual's record was sealed as a result of a court order.
 - 1. Marijuana-related offenses covered by the marijuana reform legislation codified at Sections 11361.5 and 11361.7 of the Health and Safety Code need not be disclosed.

- (B) If convicted of a crime other than a minor traffic violation, provide information regarding the conviction.
- (2) Fingerprints shall be submitted by electronic transmission to the California Department of Justice by a fingerprinting entity approved by the California Department of Justice.
- (g) All individuals subject to a criminal record review shall prior to having contact with clients, prospective clients, or having access to confidential client information:
 - (1) Request and be approved for a criminal record clearance or criminal record exemption as required by the Department,
 - (2) ~~Request and be approved for~~ a transfer of a criminal record clearance as specified in subdivision (h), or
 - (3) Request and be approved for a transfer of a criminal record exemption, as specified in subdivision (q) of section 130110.
- (h) A Home Care Organization applicant, Home Care Organization licensee or designee may request the transfer of a criminal record clearance that was issued for another Home Care Organization, a facility licensed by the Department, the TrustLine Registry, the Home Care Aide Registry, a certified family home, resource family home, or for administrator certification by providing the following documents to the Department:
 - (1) A signed request for a criminal record clearance transfer.
 - (2) A copy of the individual's:
 - (A) Valid driver's license, or
 - (B) Valid Permanent Resident Card, or
 - (C) Valid identification card issued by the Department of Motor Vehicles, or
 - (D) Valid photo identification issued by another state or the United States government if the individual is not a California resident.
 - (3) Any other documentation required by the Department.
- (i) The Department shall hold criminal record clearances in its active files for a minimum of three years after an individual is no longer employed by a Home Care Organization or on the Home Care Aide Registry in order to facilitate a transfer request.

- (j) If the criminal record information of any individuals specified in subdivision (b) discloses a plea or verdict of guilty or a conviction following a plea of nolo contendere for any crime other than a minor traffic violation for which the fine was less than \$300, and an exemption pursuant to Section 1522 of the Health and Safety Code has not been granted, the Department shall take the following actions:
- (1) For initial Home Care Organization applicants, deny the application, and exclude the affected individual from Home Care Organizations and the Home Care Aide Registry pursuant to Section 1558 of the Health and Safety Code.
 - (2) For initial Home Care Aide applicants, deny the application, and exclude the affected individual from Home Care Organizations and the Home Care Aide Registry pursuant to Section 1558 of the Health and Safety Code unless the Department elects to cease processing the application due to the Home Care Aide applicant's failure to respond or submit exemption documents as requested by the Department.
 - (3) For current Home Care Organization licensees, the Department may institute an administrative action, including, but not limited to, revocation of the license, and exclusion of the affected individual from Home Care Organizations and the Home Care Aide Registry pursuant to Section 1558 of the Health and Safety Code.
 - (4) For Registered Home Care Aides, the Department may institute an administrative action, including, but not limited, revocation of the registration, and exclusion of the affected individual from Home Care Organizations and the Home Care Aide Registry pursuant to Section 1558 of the Health and Safety Code.
 - (5) For current staff persons, volunteers, employees, individuals having a 10-percent or greater controlling ownership interest in a Home Care Organization, or the chief executive officer or other person serving in a similar capacity, exclude the affected individual from Home Care Organizations and the Home Care Aide Registry pursuant to Section 1558 of the Health and Safety Code.
- (k) The Home Care Organization licensee shall maintain documentation of criminal record clearances or criminal record exemptions of all staff persons, volunteers, employees, and Affiliated Home Care Aides in the individual's personnel file as required in 130066.
- (1) Documentation shall be available for inspection by the Department.
- (l) The Department may seek verification from a law enforcement agency or court of an individual's criminal record as reported to the Department from any member of the public or affected individual.

- (1) Upon obtaining confirmation from a law enforcement agency or court of the offense, the Department shall proceed as if this criminal record information was provided by the California Department of Justice.
- (m) If the Department determines any individual specified in Sections 1796.23, 1796.33, 1796.43 of the Health and Safety Code has been arrested for any crime specified in Subdivision (c) of Section 290 of the Penal Code, for violating Sections 243, 273ab, or 273.5, Subdivision (b) of Section 273a, or, prior to January 1, 1994, paragraph (2) of Section 273a, of the Penal Code, or for any crime for which the Department is prohibited from granting ~~a~~ a criminal record exemption, pending completion of its investigation into the facts underlying the arrest, the Department may take the following actions:
 - (1) For initial Home Care Organization applicants and Home Care Aide applicants, the Department may notify the applicant in writing that a background investigation will be conducted based on criminal record information received from the California Department of Justice. Applicants may not provide home care services and cannot have access to any confidential client information of a licensed Home Care Organization pending the investigation.
 - (2) For current Home Care Organization licensees or Registered Home Care Aides, the Department may notify the individual in writing that a background investigation will be conducted based on criminal record information received from the California Department of Justice.
 - (3) The investigation will be conducted by the Department and the individual will be notified in writing once a determination is made.
 - (A) For initial Home Care Organization applicants or Home Care Aide applicants, the Department may approve or deny the application.
 - (B) For Registered Home Care Aides, the Department may allow the Registered Home Care Aide to remain on the Home Care Aide Registry or the Department may revoke the registration.

Authority Cited: Sections 1796.23, 1796.33, 1796.43, and 1796.63, Health and Safety Code.

Reference: Section 1796.37, Health and Safety Code.

Adopt as Amended:

ARTICLE 13: CRIMINAL RECORD EXEMPTIONS

Adopt as Amended Section 130110 to read:

130110 CRIMINAL RECORD EXEMPTION 130110

- (a) The Department will notify a Home Care Organization licensee to act immediately to remove or bar any person specified in 130100(b) and described in subdivision (a)(1) through (a)(5) below, from providing home care services for the Home Care Organization or from having contact with clients, prospective clients or access to confidential client information while the Department considers granting or denying a criminal record exemption. Upon notification, the Home Care Organization licensee shall comply with the notice.
- (1) Any person who has been convicted of, or is awaiting trial for, a sex offense against a minor;
 - (2) Any person who has been convicted of a felony;
 - (3) Any person who has been convicted of an offense specified in Sections 243.4, 273a, 273ab, 273d, 273g, or 368 of the Penal Code or any other crime specified in Section 1522(c)(3) of the Health and Safety Code;
 - (4) Any person who has been convicted of any crime specified below:
 - (A) Battery
 - (B) Shooting at Inhabited Dwelling
 - (C) Corporal Injury on Spouse/Cohabitant
 - (D) Discharging Firearm with Gross Negligence
 - (E) Exhibiting Weapon/Firearm
 - (F) Threat to Commit a Crime Resulting in Gross Bodily Injury or Death
 - (G) Criminal Threat to Harm or Injure Another Person
 - (H) Cruelty to Animals
 - (I) Willful Harm or Injury to Child; or
 - (5) Any other person ordered to be removed by the Department.

- (b) After a review of the criminal record information, the Department may grant a criminal record exemption if the affected individual presents substantial and convincing evidence satisfactory to the Department that the individual has been rehabilitated and presently is of such good character pursuant to Section 1522 of the Health and Safety Code as to justify registration on the Home Care Aide Registry, being issued or maintaining a Home Care Organization license, or employment or volunteer work with a licensed Home Care Organization, and:
- (1) The Home Care Organization applicant or Home Care Organization licensee, Home Care Aide applicant or Registered Home Care Aide requests a criminal record exemption in writing for himself or herself, or
 - (2) The Home Care Organization applicant or Home Care Organization licensee requests a criminal record exemption in writing for an individual specified in subdivision (b)(3) and (b)(4) of section 130100 and who is associated with the Home Care Organization, or
 - (3) The Home Care Organization applicant or Home Care Organization licensee chooses not to seek a criminal record exemption for an individual specified in subdivision (b) of section 130100, and the affected individual requests a criminal record exemption in writing on his/her own behalf.
- (c) The Department will notify the Home Care Organization applicant or Home Care Organization licensee and the affected individual, in concurrent, separate notices, that the affected individual has criminal conviction(s) and needs to obtain a criminal record exemption. To request a criminal record exemption, a Home Care Organization applicant or a Home Care Organization licensee, a Home Care Aide applicant, or Registered Home Care Aide, or the affected individual if requesting an exemption on his/her own behalf, must submit information that indicates that the individual seeking a criminal record exemption meets the requirements of subdivision (b).
- (1) The notice to the affected individual shall include a list of the conviction(s) that the Department is aware of at the time the notice is sent that must be addressed in a criminal record exemption request.
 - (A) The notice shall also include any other criminal record information provided to the Department by the California Department of Justice as a result of the fingerprint submission.
 - (2) The notice will list the information that must be submitted to request a criminal record exemption.
 - (3) The information must be submitted to the Department within forty-five (45) days of the date of the Department's notice.

- (A) Individuals who submit a criminal record exemption request shall cooperate with the Department by providing any information requested by the Department, including, but not limited to, police reports and certified court documents to process the criminal record exemption request, pursuant to subdivision (d).
 - (B) If the individual for whom the criminal record exemption is requested is a staff person, volunteer, or employee and the Home Care Organization applicant or Home Care Organization licensee does not submit the information listed in the Department's written notice within forty-five (45) days of the date of the notice, the Department may cease processing the criminal record exemption request and close the case.
 - (C) If the individual for whom the criminal record exemption is requested is a Home Care Organization applicant or Home Care Aide applicant, and the applicant does not submit the information listed in the Department's written notice within forty-five (45) days of the date of the notice, the Department may deny the criminal record exemption request.
 - (D) ~~Individuals may request a criminal record exemption on his/her own behalf if the Home Care Organization applicant or Home Care Organization licensee chooses not to request the criminal record exemption after notification of the need for a criminal record exemption.~~ If the individual for whom the criminal record exemption is requested is a Home Care Organization licensee or Registered Home Care Aide, and the individual does not submit the information listed in the Department's written notice within forty-five (45) days of the date of the notice, the Department shall deny the criminal record exemption.
 - (E) Individuals may request a criminal record exemption on his/her own behalf if the Home Care Organization applicant or Home Care Organization licensee chooses not to request the criminal record exemption after notification of the need for a criminal record exemption.
- (d) The Department shall consider factors including, but not limited to, the following as evidence of good character and rehabilitation:
- (1) The nature of the crime including, but not limited to, whether it involved violence or a threat of violence to others.
 - (2) Period of time since the crime was committed and the number of offenses.
 - (3) Circumstances surrounding the commission of the crime that would demonstrate the unlikelihood of repetition.

- (4) Activities since conviction, including employment or participation in therapy or education, that would indicate changed behavior.
- (5) Granting by the Governor of a full and unconditional pardon.
- (6) Character references.
 - (A) All character references shall be on a Reference Request (LIC 301E) provided by the Department.
- (7) A certificate of rehabilitation from a superior court.
- (8) Evidence of honesty and truthfulness as revealed in criminal record exemption application documents.
 - (A) Documents include, but are not limited to:
 - 1. A Criminal Record Statement (LIC 508), and
 - 2. The individual's written statement/explanation of the conviction and the circumstances about the arrest.
- (9) Evidence of honesty and truthfulness as revealed in criminal record exemption application interviews and conversations with the Department.
- (e) The Department shall also consider the following factors in evaluating a request for a criminal record exemption:
 - (1) The type of clients who are to be provided services.
 - (2) The individual's age at the time the crime was committed.
- (f) The Department may deny a criminal record exemption request if:
 - (1) The Home Care Organization applicant or Home Care Organization licensee and/or the affected individual fails to provide documents requested by the Department, or
 - (2) The Home Care Organization applicant or Home Care Organization licensee and/or the affected individual fails to cooperate with the Department in the criminal record exemption process.
- (g) The reasons for any criminal record exemption denial shall be in writing and kept by the Department.
 - (1) Criminal record exemption denial notices to the Home Care Organization applicant, the Home Care Organization licensee, and the affected

individual shall specify the reason the criminal record exemption was denied.

- (h) The Department has the authority to grant a criminal record exemption that places conditions on the scope of the Home Care Organization's license, an individual's status as a ~~registered~~ Registered Home Care Aide, or the scope of employment or volunteer work in a licensed Home Care Organization.
 - (1) Other than maintaining the Home Care Aide Registry, the Department shall have no oversight responsibility regarding Home Care Aides. Any condition placed on a Home Care Aide shall relate solely to any criminal conviction information received by the Department.
 - (2) Notwithstanding subdivision (p), if a Home Care Aide applicant has been denied a criminal record exemption prior to December 1, 2016, he or she may reapply once, immediately to be registered. Thereafter, if an applicant's criminal record exemption is again denied after reapplying pursuant to this paragraph, such applicant shall be excluded for two years, pursuant to subdivision (p).
- (i) It shall be conclusive evidence that the individual is not of good character as to justify issuance of a criminal record exemption if the individual:
 - (1) Makes a knowingly false or misleading statement regarding:
 - (A) Material relevant to his/her application for a criminal record clearance or criminal record exemption;
 - (B) His or her criminal record clearance, criminal record exemption, or registry status to obtain employment or to provide home care services as a Registered Home Care Aide; or
 - (C) His or her criminal record clearance or criminal record exemption status in order to obtain a position with duties that are prohibited to him/her by a conditional criminal record exemption.
 - (2) Is on formal, supervised probation or parole.
 - (A) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the Department may, in its discretion, grant a criminal record exemption.
- (j) The Department shall consider granting a criminal record exemption if the individual's criminal record meets all of the applicable criteria specified in subdivisions (j)(1) through (j)(6) and the individual provides the Department with substantial and convincing evidence of present good character as specified in subdivision (b). For purposes of this section, a violent crime is a crime that, upon

evaluation of the code section violated or the reports regarding the underlying offense, presents a risk of harm or violence.

- (1) The individual has been convicted of one nonviolent misdemeanor, and one year has lapsed since completing the most recent period of incarceration or probation.
 - (2) The individual has been convicted of two or more nonviolent misdemeanors and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (3) The individual has been convicted of one or more violent misdemeanors and fifteen (15) consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (4) The individual has been convicted of one nonviolent felony and four consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (5) The individual has been convicted of two or more nonviolent felonies and ten consecutive years have lapsed since completing the most recent period of incarceration, probation or parole, whichever is latest.
 - (6) The individual has not been convicted of a violent felony.
 - (7) If the individual is currently on probation, and provides sufficient proof that the probationary period(s) is informal, unsupervised and no probation officer is assigned, the period of lapsed time required in subdivisions (j)(1) through (j)(5) shall begin from the last date of conviction(s).
- (k) It shall be a rebuttable presumption that an individual is not of such good character as to justify the issuance of a criminal record exemption if the individual fails to meet the requirements specified in subdivisions (j)(1) through (j)(7).
- (l) The Department shall not grant a criminal record exemption if the individual has a conviction for any offense specified in Subdivision (g)(1)(A) or (B) of Section 1522 of the Health and Safety Code.
- (m) The Department may grant a simplified criminal record exemption only if the Department determines that all the following apply:
- (1) The individual does not have a demonstrated pattern of criminal activity;
 - (2) The individual has one or more convictions arising from a single incident of criminal conduct;

- (3) The conviction(s) is a misdemeanor(s) and is nonviolent and does not pose a risk of harm to an individual; and
 - (4) It has been at least five consecutive years since the date of conviction, or if applicable, since the date of completion of the most recent period of incarceration or supervised probation.
- (n) At the Department's discretion, an individual who is otherwise eligible for a simplified criminal record exemption may be required to go through the standard criminal record exemption process if the Department determines such action will help to protect the health and safety of clients.
- (o) If the Department denies a criminal record exemption, the Department shall:
 - (1) For initial Home Care Organization applicants, deny the application and exclude the affected individual from Home Care Organizations and the Home Care Aide Registry pursuant to subdivision (p) and Section 1558 of the Health and Safety Code.
 - (2) For initial Home Care Aide applicants, deny the application and exclude the affected individual from Home Care Organizations and the Home Care Aide Registry pursuant to subdivision (p) and Section 1558 of the Health and Safety Code.
 - (3) For current Home Care Organization licensees or Registered Home Care Aides, the Department may institute an administrative action, including, but not limited to, revocation of the license or registration and exclusion of the affected individual from Home Care Organizations and the Home Care Aide Registry pursuant to subdivision (p) and Section 1558 of the Health and Safety Code.
 - (4) For current staff persons, volunteers, employees, individuals having a 10-percent or greater controlling ownership interest in a Home Care Organization, or the chief executive officer or other person serving in a similar capacity, rescind the previously granted criminal record clearance or criminal record exemption and exclude the affected individual from Home Care Organizations and the Home Care Aide Registry pursuant to subdivision (p) and Section 1558 of the Health and Safety Code.
- (p) If a request for a criminal record exemption has been denied, the individual shall be excluded for a period of two years unless the individual has been convicted of a crime for which no criminal record exemption may be granted pursuant to subdivision (l). If a request for a criminal record exemption has been denied based on a conviction of a crime for which no criminal record exemption may be granted, the individual shall be excluded for the remainder of the individual's life.
 - (1) If the Department determines during the review of a criminal record exemption request, that the individual was denied a criminal record

exemption for a conviction of a crime for which a criminal record exemption may be granted within the preceding two years, the Department shall cease any further review of the request until two years have elapsed from the date of the denial. In cases where the individual requested a hearing on a criminal record exemption denial, the Department shall cease review of the request for a criminal record exemption until two years from the effective date of the decision and order of the Department upholding the denial. In cases where the individual submitted a petition for reinstatement or reduction in penalty pursuant to Section 11522 of the Government Code, and the petition was denied, the Department shall cease review of the request for a criminal record exemption until two years from the effective date of the decision and order of the Department denying the petition unless a subsequent petition has been granted.

- (2) An exclusion order based solely upon a denied criminal record exemption shall remain in effect, unless either a petition or a criminal record exemption is granted, and the individual shall not:
 - (A) Serve as a member of the board of directors, an executive director, an officer, a volunteer, or a licensee of a Home Care Organization;
 - (B) Be employed at, continue employment of, or volunteer at a Home Care Organization if the individual has contact with clients, prospective clients, or confidential client information at a Home Care Organization;
 - (C) Apply to be or continue to be a Registered Home Care Aide; or,
 - (D) Have contact with clients, prospective clients or access to confidential client information of a Home Care Organization.
- (3) If an individual who has previously been denied a criminal record exemption re-applies after the relevant time period described in subdivision (p)(1), the Department may, according to the provisions in this section, grant or deny the subsequent request for a criminal record exemption.
- (4) If an individual submits a petition pursuant to Section 11522 of the Government Code for reinstatement or reduction of penalty for an exclusion, an individual must submit his/her fingerprints through an electronic fingerprinting system approved by the Department and submit to the Department a statement of the reason why the individual should be permitted to be licensed as a Home Care Organization, registered as a Home Care Aide, or employed or provide volunteer work for a licensed Home Care Organization, along with all information required of an individual requesting a criminal record exemption as provided in this section. If it is determined, based upon information provided by the

California Department of Justice, that the individual has been convicted of a crime for which no criminal record exemption may be granted, the petition shall be denied. An individual's failure to submit fingerprints or other information as requested by the Department shall be grounds for denial of the petition. The burden shall be on the petitioner to prove sufficient rehabilitation and good character to justify the granting of the petition.

- (q) A Home Care Organization applicant, Home Care Organization licensee, or designee may request a transfer of a criminal record exemption for those specified in subdivision (b) of section 130100 that was issued for another Home Care Organization, a facility licensed by the Department, the TrustLine Registry, the Home Care Aide Registry, a certified family home, a resource family home, or for administrator certification to his/her Home Care Organization by providing the following documents to the Department:
 - (1) A signed Criminal Record Exemption Transfer Request (LIC 9188).
 - (2) A copy of the individual's:
 - (A) Valid driver's license, or
 - (B) Valid identification card issued by the Department of Motor Vehicles,
 - (C) Valid Permanent Resident Card, or
 - (D) Valid photo identification issued by another state or the United States government if the individual is not a California resident.
 - (3) A completed Criminal Record Statement (LIC 508) signed by the individual.
 - (4) Any other documentation required by the Department.
- (r) The Department may transfer a criminal record exemption of a Home Care Aide applicant that was issued for another Home Care Organization, a facility licensed by the Department, the TrustLine Registry, the Home Care Aide Registry, a certified family home, or for administrator certification to the Home Care Aide Registry following the submission of a Home Care Aide Registry application. The Department may consider factors including, but not limited to, the following in determining whether or not to approve a criminal record exemption transfer:
 - (1) The basis on which the Department granted the criminal record exemption;
 - (2) The nature and frequency of client contact in the new position;

- (3) The category of facility where the individual wishes to transfer;
 - (4) The type of clients served by the Home Care Organization where the individual wishes to transfer;
 - (5) Whether the criminal record exemption was appropriately evaluated and granted in accordance with existing criminal record exemption laws or regulations; and
 - (6) Whether the criminal record exemption meets current criminal record exemption laws or regulations.
- (s) If the Department denies the individual's request to transfer a criminal record exemption, the Department shall provide the individual and the Home Care Organization applicant or Home Care Organization licensee with written notification that states the Department's decision and informs the affected individual of his/her right to an administrative hearing to contest the Department's decision.
- (t) At the Department's discretion, a criminal record exemption may be rescinded if it is determined that:
- (1) The criminal record exemption was granted in error;
 - (2) The criminal record exemption does not meet current criminal record exemption laws or regulations; or
 - (3) The conviction for which a criminal record exemption was granted subsequently becomes non-exemptible by law.
- (u) The Department may rescind an individual's criminal record exemption if the Department obtains evidence showing that the individual engaged in conduct that is inconsistent with the good character requirement of a criminal record exemption or violates any condition placed on the criminal record exemption pursuant to subdivision (h), as evidenced by factors including, but not limited to, the following:
- (1) Violations of licensing laws or regulations;
 - (2) Any conduct by the individual that indicates that the individual may pose a risk to the health and safety of any individual who is or may be a client;
 - (3) Nondisclosure of a conviction or evidence of lack of rehabilitation that the individual failed to disclose to the Department, even if it occurred before the criminal record exemption was issued; or
 - (4) The individual is convicted of a subsequent crime.

- (v) If the Department rescinds a criminal record exemption the Department shall:
 - (1) Notify the affected individual and the Home Care Organization licensee if the individual is an Affiliated Home Care Aide, staff person, employee, or volunteer, and
 - (2) Initiate an administrative action.
- (w) If the Department learns an individual with a criminal record clearance or criminal record exemption has been convicted of a subsequent crime, the Department, at its sole discretion, may immediately initiate an administrative action to protect the health and safety of clients.

Authority Cited: Sections 1522, 1558, and 1796.63, Health and Safety Code.

Reference: Sections 1796.23, 1796.24, and 1796.48, Health and Safety Code.

Adopt as Amended:

ARTICLE 14: HOME CARE ORGANIZATION LICENSE RENEWAL

Adopt as Amended Section 130200 to read:

130200 APPLICATION FOR LICENSE RENEWAL 130200

- (a) Any adult, firm, partnership, association, corporation, county, city, public agency or other governmental entity desiring to renew a Home Care Organization license shall file with the Department a renewal application, on forms furnished by the Department.
 - (1) When the Home Care Organization licensee does not file a renewal application, the license shall expire two (2) years following the date of issuance.
 - (2) If the license is not renewed, a Department representative will visit the location of the previously licensed Home Care Organization within sixty (60) days to ensure it is no longer operating.
- (b) The Home Care Organization licensee shall sign the renewal application acknowledging he or she has read and understands the statutes and regulations which pertain to Home Care Organizations prior to the license being renewed by the Department.
- (c) The renewal application shall contain the following on forms furnished by the Department:
 - (1) Application for a Home Care Organization License (HCS 200):
 - (A) Home Care Organization licensee name, mailing address and telephone number.
 - (B) Type of application action requested.
 - (C) Name of the individual or entity filing the application.
 - (D) Name, email address, and telephone number of the Home Care Organization.
 - (E) Physical address and county of the Home Care Organization.
 - (F) Alternate telephone number, if applicable.
 - (G) Mailing address of the Home Care Organization.

- (H) Name and title of designee or person in charge of the Home Care Organization.
 - (I) Total number of aides as measured by the current number of individuals providing home care services.
 - (J) Business office hours of Home Care Organization.
 - (k) Property ownership status, and name, mailing address, and phone number of property owner if renting or leasing, if applicable.
 - (L) Home Care Organization licensee signature, title, county where signed, and date.
 - 1. If the Home Care Organization licensee is a partnership, the name, signature, and mailing address of each general partner shall be provided.
 - 2. If a general partner is a corporation or other business organization, the chief executive officer, or equivalent shall sign the application.
 - a. All general partners shall be named and sign the license application.
 - 3. If the member or managing member is a corporation or other business organization, the managing member or equivalent shall sign the renewal application.
 - 4. If the Home Care Organization licensee is a corporation the application shall be signed by the chief executive officer or equivalent.
 - (M) Any other information which may be required by the Department for the proper administration and enforcement of this regulation.
- (2) The Home Care Organization's Personnel Report (~~LIC 500~~) (HCS 600):
- (A) Home Care Organization name.
 - (B) Home Care Organization number.
 - (C) Home Care Organization address.
 - (D) Licensure date.
 - (E) Personnel Identification number.

- (F) First name of licensee(s), employee(s), volunteer(s), and Affiliated Home Care Aide(s).
- (G) Last name of licensee(s), employee(s), volunteer(s), and Affiliated Home Care Aide(s).
- (H) Personnel Type "L" for licensee, "E" for employee or volunteer, and "H" for Affiliated Home Care Aide.
- (I) Hire date of licensee(s), employee(s), volunteer(s), and Affiliated Home Care Aide(s).
- (J) Date of most recent tuberculosis test, if applicable.
- (K) Trainings hours to date, if applicable.
- (3) Forms specified in subdivisions (c)(2) and (c) (3) of section 130021 and subdivision (d)(6) of section 130021 if any changes have been made since licensure.
- (d) The following items shall be filed with the renewal application:
 - (1) Supporting documents as specified in subdivision (d) of section 130021, if updates have been made since licensure.
 - (2) The fee for processing the renewal application as set forth in 130028. The renewal fee may be paid by check, money order, or credit card.
- (e) Unless otherwise specified, the Home Care Organization licensee shall provide original documents to the Department.

Authority Cited: Sections 1796.37, 1796.40, and 1796.63, Health and Safety Code.

Reference: Section 1796.55, Health and Safety Code.

Adopt Section 130201 to read:

130201 RENEWAL APPLICATION REVIEW

130201

- (a) Within thirty (30) calendar days of receipt of the renewal application package, the Department shall give written notice to the Home Care Organization licensee of one of the following:
 - (1) The renewal application is complete and the Department will begin its review.
 - (2) The renewal application is deficient, describing what documents are outstanding, inadequate, or both, and informing the Home Care Organization licensee the information must be submitted within thirty (30) calendar days of the date of the notice.
 - (A) If the Home Care Organization renewal applicant does not submit the required information within the thirty (30) calendars days, the application may be denied unless the Department has received and approved a withdrawal request as set forth in Section 130024.
- (b) The renewal application review shall not constitute approval of the renewal application.
- (c) Within thirty (30) calendar days of the date that a completed renewal application has been received and its review has been completed, the Department shall give written notice to the Home Care Organization licensee of one of the following:
 - (1) The renewal application has been approved.
 - (2) The renewal application has been denied.
 - (A) The notice of denial shall include the information specified in Section 130040.
 - (B) The circumstances and conditions in which the Department may continue to review a previously denied renewal application shall include, but are not limited to, the following:
 - 1. A person with a criminal record, which was the basis for license renewal denial, is no longer associated with the Home Care Organization.
 - (3) The Department has ceased review of the renewal application as one or more of the conditions specified in Section 1796.40 of the Health and Safety Code has occurred.

- (A) The Department shall provide written notice to the Home Care Organization licensee, indicating when the Home Care Organization may reapply for licensure. It shall be the responsibility of the Home Care Organization to submit a new application if a license is still desired. Cessation of review will not result in additional time added to the initial denial or revocation period as set forth in the Section 1796.40 of the Health and Safety Code.

Authority Cited: Sections 1796.37, 1796.40, and 1796.63, Health and Safety Code.

Reference: Section 1796.55, Health and Safety Code.

Adopt Section 130202 to read:

130202 WITHDRAWAL OF RENEWAL APPLICATION

130202

- (a) A Home Care Organization licensee shall have the right to request to withdraw a renewal application.
 - (1) The withdrawal shall be in writing and the renewal application fee shall be forfeited.
 - (A) A withdrawal request shall not deprive the Department of its authority to institute or continue a proceeding against the Home Care Organization licensee upon any ground permitted by law, unless it has consented in writing to such withdrawal.
 - (2) If the Department grants the withdrawal, no time shall be required to elapse before a new application may be submitted.

Authority Cited: Sections 1796.37 and 1796.63, Health and Safety Code.

Reference: Sections 1796.37, 1796.38, 1796.47, 1796.49, and 1796.55, Health and Safety Code.

Adopt Section 130203 to read:

130203 DENIAL OF RENEWAL APPLICATION

130203

- (a) The Department shall deny an application for a Home Care Organization license renewal if it determines the Home Care Organization licensee is not in compliance with applicable laws and regulations.
 - (1) In addition to Section 1796.38 of the Health and Safety Code, a renewal application may be denied for the following reasons:
 - (A) The Home Care Organization licensee failed to pay a civil penalty assessment pursuant to 130052, 130054, or for another facility licensed by the Department and in accordance with a final judgment issued by a court of competent jurisdiction, unless payment arrangements acceptable to the Department have been made.
 - (B) Failure to cooperate with the Department during the Home Care Organization renewal application process.
- (b) If the renewal application is denied, the Department shall mail the Home Care Organization licensee a notice of denial.
 - (1) The notification shall inform the Home Care Organization licensee of the reason for the denial and the right to appeal as set forth in 130057.
 - (2) A denied renewal application shall not deprive the Department of its authority to institute or continue a proceeding against the Home Care Organization licensee upon any ground provided by law, unless it has consented in writing to such an agreement.
- (c) Notwithstanding an appeal action, a Home Care Organization that is denied renewal is considered unlicensed and shall not operate pending adoption by the Department of a decision on the denial action.

Authority Cited: Sections 1796.37, 1796.38, 1796.55, and 1796.63, Health and Safety Code.

Reference: Sections 1796.40, 1796.41, and 1796.49, Health and Safety Code.

Adopt as Amended:

ARTICLE 15: HOME CARE AIDE REGISTRATION RENEWAL APPLICATION

Adopt as Amended Section 130210 to read:

130210 APPLICATION FOR REGISTRATION RENEWAL 130210

- (a) Any individual seeking to renew a Home Care Aide registration shall file with the Department a renewal application by one of the following means:
 - (1) A Home Care Aide Registry renewal application mailed to the Department with non-refundable application renewal fee, as specified in ~~430085~~ 130084, paid by check or money order.
 - (2) A Home Care Aide Registry renewal application submitted online with non-refundable application fee, as specified in ~~430085~~ 130084, paid by credit card.
- (b) The renewal application mailed to the Department shall contain the following on forms furnished by the Department:
 - (1) Home Care Aide Registration Renewal (HCS 101):
 - (A) Name of the Home Care Aide renewal applicant filing the renewal application.
 - (B) Personnel identification number of the Home Care Aide renewal applicant.
 - (C) Home Care Aide renewal applicant's signature and date.
- (c) The renewal application submitted online to the Department shall contain the following:
 - (1) Name of the Home Care Aide renewal applicant filing the application.
 - (2) Personnel identification number of the Home Care Aide renewal applicant.
- (d) The Home Care Aide renewal applicant may update the following information on the renewal application submitted by mail or online:
 - (1) Residence and mailing address of the Home Care Aide renewal applicant.
 - (2) Day and evening telephone numbers of the Home Care Aide renewal applicant.

(3) Email address of the Home Care Aide renewal applicant.

Authority Cited: Sections 1796.31 and 1796.63, Health and Safety Code.

Reference: Sections 1796.12, 1796.25, and 1796.48, Health and Safety Code.

Adopt as Amended Section 130211 to read:

**130211 RENEWAL APPLICATION REVIEW AND
CONTINUANCE OF REGISTRATION**

130211

- (a) If the Registered Home Care Aide does not submit a ~~completed~~ complete renewal application and fee on or before the registration expiration date, the Department shall cease processing of the renewal application and the Home Care Aide's registration will be forfeited, ~~provided the Department has not revoked or taken action to revoke the registration.~~ A forfeited registration does not deprive the Department of its authority to institute or continue a proceeding against a Home Care Aide upon any ground provided by law.
- (1) The Department shall provide written notice of the registration forfeiture to the individual and all Home Care Organizations to which the individual is affiliated.
- (2) It shall be the responsibility of the individual to submit a new application, including application fees, if registration is desired and the individual is otherwise eligible to reapply.
- (b) If the Department approves the renewal application, the Home Care Aide's registration status will remain the same, and the Home Care Aide Registry will reflect the new expiration date.

Authority Cited: Sections 1796.31, 1796.37, 1796.48, and 1796.63, Health and Safety Code.

Reference: Sections 1796.25 and 1796.26, Health and Safety Code.